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CONSTITUTION OF THE STATE OF ARKANSAS OF 1874

ARTICLE 2

Declaration of Rights

§ 2. Freedom and independence.

RESEARCH REFERENCES

Ark. L. Rev. Lessons From Lake View: Some Questions and Answers from Lake View School District No. 25 v. Huckabee, 56 Ark. L. Rev. 519.

The New Judicial Federalism Takes Root in Arkansas, 58 Ark. L. Rev. 883.

U. Ark. Little Rock L. Rev. Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 U. Ark. Little Rock L. Rev. 681.

Annual Survey of Caselaw, Constitutional Law, 25 U. Ark. Little Rock L. Rev. 908.

Note, Constitutional Law — Education and Equal Protection — Towards Intelligence and Virtue: Arkansas Embarks on a Court-Mandated Search for an Adequate and Equitable School Funding System. Lake View School District No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002), 26 U. Ark. Little Rock L. Rev. 143.

Funding the Education of Arkansas's Children: A Summary of the Problems and Challenges, 27 U. Ark. Little Rock L. Rev. 1.

§ 3. Equality before the law.

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ALR. Federal and state constitutional provisions and state statutes as prohibiting employment discrimination based on heterosexual conduct or relationship. 123 A.L.R.5th 411.

Application of Class-of-One Theory of Equal Protection to Public Employment. 32 A.L.R.6th 457.

Ark. L. Rev. Lessons From Lake View: Some Questions and Answers from Lake View School District No. 25 v. Huckabee, 56 Ark. L. Rev. 519.

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Annual Survey of Caselaw, Constitutional Law, 25 U. Ark. Little Rock L. Rev. 908.

Note, Constitutional Law — Education and Equal Protection — Towards Intelligence and Virtue: Arkansas Embarks on a Court-Mandated Search for an Adequate and Equitable School Funding System. Lake View School District No. 25 v.

Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002), 26 U. Ark. Little Rock L. Rev. 143.

Funding the Education of Arkansas's Children: A Summary of the Problems and Challenges, 27 U. Ark. Little Rock L. Rev. 1.

CASE NOTES

Analysis

Class Legislation.
Discrimination.
Medical Malpractice.
Taxation.
Workers' Compensation Benefits.

Class Legislation.

Where a tobacco products manufacturer which did not participate in a settlement between states and tobacco companies alleged that an amendment to a statute implementing the settlement provided unequal treatment depending upon whether an entity participated or did not participate in the settlement, no equal protection violation was shown since the amendment bore a rational relationship to the state's interest in reducing the rate of smoking in the state. Dos Santos v. Beebe, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Discrimination.

Defendant's arguments regarding a *Batson v. Kentucky* violation were not preserved for appellate review where defendant failed to offer any additional argument or other proof to rebut the state's and the trial court's race-neutral explanations and to show that the state's motives were not genuine, as was required during the third stage of the *Batson* process. Lewis v. State, 84 Ark. App. 327, 139 S.W.3d 810 (2004).

African-American defendant's Batson challenge failed where the state only used five of its six peremptory strikes and, in addition, the jury included at least one African-American. Ratliff v. State, 359 Ark. 479, 199 S.W.3d 79 (2004).

Police officer engaged in racial profiling prohibited by state statute, the state constitution, the U.S. Constitution, and the city's written policy and the officer also illegally seized one of the plaintiffs, thereby violating U.S. Const., Amend. IV and the state constitution; the police chief, who supervised the officer and ran the police department, was deliberately indifferent to ongoing and systemic racial profiling of which he was aware and municipal liability was imposed on the city as it permitted the officer to establish and to carry out a custom and practice of engaging in racial profiling. The officer's true objective was not to enforce traffic laws prohibiting people from driving with their vision obstructed or other minor infractions; rather, the neutral traffic laws were used as a pretext for harassing Hispanics (whether here legally or illegally), for obtaining money through fines and towing charges for the financially troubled city, and to provide an incentive for Hispanics to move out of the area—clearly illegitimate objectives. Giron v. City of Alexander, 693 F. Supp. 2d 904 (E.D. Ark. 2010).

Medical Malpractice.

Statute of limitations in the Medical Malpractice Act, § 16-114-201 et seq., has a rational basis and it does not deprive a claimant of a constitutional right to a redress of wrongs or a jury trial, nor does it violate the right to equal protection. Davis v. Parham, 362 Ark. 352, 208 S.W.3d 162 (2005).

Where patient alleged that § 16-114-207 was violative of the Fourteenth Amendment to the United States Constitution and this section, but failed to raise her strict scrutiny argument before the circuit court, the Arkansas Supreme Court applied a rational basis test and determined that the statute was rationally related to the purposes of the legislature in enacting the statute. Whorton v. Dixon, 363 Ark. 330, 214 S.W.3d 225 (2005).

Taxation.

Tobacco product distributors' equal protection claims concerning § 26-57-261 were dismissed where distributors were not required to pay more for their Arkansas sales than would a participating manufacturer. Grand River Enters. Six Nations, Ltd. v. Beebe, 418 F. Supp. 2d 1082 (W.D. Ark. 2006).

Workers' Compensation Benefits.

Arkansas Workers' Compensation Commission erred in holding that § 11-9-

522(f)(1) was constitutional where the statute created a ceasing point for permanently totally disabled (PTD) benefits so that older workers who were eligible for social security or retirement benefits were foreclosed from receiving PTD benefits for a legitimate work-related injury. There was no rational basis for such a distinction. Osborne v. Bekaert Corp., 97 Ark. App. 147, 245 S.W.3d 185 (2006).

Legislature had a rational and legitimate public purpose for distinguishing between mental and physical workers' compensation injuries under § 11-9-113(b)(1), limiting compensation for mental injuries to 26 weeks, because there was a greater potential for fraudulent claims being advanced for mental injuries, and permitting more extensive benefits for mental injuries would act as a disincentive for workers to devote themselves fully to psychological or psychiatric treatment and recovery. Therefore, § 11-9-113(b)(1) did not violate equal protection under this section. Pat Salmon & Sons, Inc. v. Pate, 2009 Ark. App. 272, 307 S.W.3d 46 (2009), rehearing denied, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 681 (May 27, 2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 635 (Sept. 24, 2009).

§ 4. Right of assembly and of petition.

RESEARCH REFERENCES

ALR. Validity of Restrictions Imposed during National Political Conventions Impinging upon Rights to Freedom of Speech and Assembly under First Amendment. 46 A.L.R.6th 465.

CASE NOTES

Analysis

Commercial Speech.
Loss of Competitive Advantage.

Commercial Speech.

Where a tobacco products manufacturer which did not participate in a settlement between states and tobacco companies alleged that an amendment to a statute implementing the settlement, which provided that the nonparticipating manufacturer paid more into escrow and retroactively eliminated refunds of the manufacturer's prior escrow overpayments, impermissibly burdened the manufacturer's free speech rights through economic pressure to participate in the settlement, no unconstitutional burden was shown since the manufacturer did not pay more than participating companies and merely lost its prior competitive advantage. Dos Santos v. Beebe, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Loss of Competitive Advantage.

Tobacco product distributors' free speech claims related to § 26-57-261 were dismissed where the alleged infringement was the loss of competitive advantage under the old allocation scheme and such a loss could not be considered an unconstitutional burden on speech, regardless of whether the speech was commercial or political in nature. Grand River Enters. Six Nations, Ltd. v. Beebe, 418 F. Supp. 2d 1082 (W.D. Ark. 2006).

§ 6. Liberty of the press and of speech — Libel.

RESEARCH REFERENCES

ALR. First Amendment protection afforded to comic books, comic strips, and cartoons. 118 A.L.R.5th 213.

First Amendment Protection Afforded to Web Site Operators. 30 A.L.R.6th 299.

First Amendment Protection Afforded to Blogs and Bloggers. 35 A.L.R.6th 407.

Validity of Restrictions Imposed during National Political Conventions Impinging upon Rights to Freedom of Speech and Assembly under First Amendment. 46 A.L.R.6th 465.

Restrictive Covenants or Homeowners' Association Regulations Restricting or Prohibiting Flags, Signage, or the Like on Homeowner's Property as Restraint on Free Speech. 51 A.L.R.6th 533.

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First Amendment Protection for Members of Military Subjected to Discharge, Transfer, or Discipline Because of Speech. 40 A.L.R. Fed. 2d 229.

Application of First Amendment's "Ministerial Exception" or "Ecclesiastical Exception" to Federal Civil Rights Claims. 41 A.L.R. Fed. 2d 445.

Ark. L. Rev. The New Judicial Federalism Takes Root in Arkansas, 58 Ark. L. Rev. 883.

CASE NOTES

Analysis

Free Press.
Loss of Competitive Advantage.
Qualified Immunity.
Retaliation.

Free Press.

There is nothing that proscribes the press from reporting events that transpire in a courtroom; once a public hearing has been held, what transpired there cannot be subject to prior restraint. Helena Daily World v. Simes, 365 Ark. 305, 229 S.W.3d 1 (2006).

Court granted newspaper's petition for a writ of certiorari directing the judge to dissolve an injunction that prevented newspaper from reporting testimony given in open court in a case involving a dispute between a mayor and a city council as the restraining order was too broad and was an unconstitutional prior restraint on the press. Helena Daily World v. Simes, 365 Ark. 305, 229 S.W.3d 1 (2006).

Loss of Competitive Advantage.

Tobacco product distributors' free speech claims related to § 26-57-261 were dismissed where the alleged infringement was the loss of competitive advantage under the old allocation scheme and such a loss could not be considered an unconstitutional burden on speech, regardless of whether the speech was commercial or political in nature. Grand River Enters. Six Nations, Ltd. v. Beebe, 418 F. Supp. 2d 1082 (W.D. Ark. 2006).

Qualified Immunity.

Mayor was entitled to summary judgment on police chief's claim under the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., because the mayor was entitled to qualified immunity; the mayor could not have reasonably known that his termination of the police chief's employment, which was done upon the discovery of missing or incomplete police reports 15 days after the police chief made a statement at a city council meeting, would violate the police chief's constitutional right to free speech under this section. Smith v. Brt, 363 Ark. 126, 211 S.W.3d 485 (2005).

Retaliation.

Former university employee's free speech retaliation claim under § 16-123-105 and this section failed because the employee's filing of sexual harassment complaints against co-workers did not constitute protected speech; the employee was merely responding to sexual harassment allegations made against the employee by the co-workers, and the employee filed the complaints in an effort to avoid termination rather than as a matter of public concern. McCullough v. Univ. of Ark. for Med. Scis., 559 F.3d 855 (8th Cir. 2009).

Cited: Smith v. Brt, 363 Ark. 126, 211 S.W.3d 485 (2005).

§ 7. Jury trial — Right to — Waiver — Civil cases — Nine jurors agreeing.

RESEARCH REFERENCES

ALR. Validity and application of computerized jury selection practice or procedure. 110 A.L.R.5th 329.

Ark. L. Rev. Comment, Peremptory Challenge: Striking Down Discrimination in Arkansas's Jury Selection Process, 59 Ark. L. Rev. 93.

First National Bank of Dewitt v. Cruthis: An Analysis of the Right to a Jury Trial in Arkansas After the Merger of Law and Equity, 60 Ark. L. Rev. 563.

CASE NOTES

Analysis

In General.
Construction.
Appeal from District Court.
Court Rules.
Equity.
Number of Jurors.
Tort Actions.
Waiver.

In General.

In a capital murder case, where the state struck two black venirepersons without questioning them because they had previously been on a hung jury or had been on a jury where a defendant was acquitted, those strikes were found to be racially neutral and survived defendant's *Batson* challenge. Stokes v. State, 359 Ark. 94, 194 S.W.3d 762 (2004).

Supreme Court could not give Arkansas Workers' Compensation Commission preclusive effect that would deprive the employee of a full and fair opportunity to litigate the issue as this section made clear that the right of a jury trial in all cases at law was inviolate unless it was waived by the litigant; due to the constitutional nature of this right, along with the right to redress of wrongs found in Ark. Const. art. 2, § 13, that made it necessary to amend the constitution before the legislature could establish workers' compensation laws, as those laws effectively stripped employees of those rights in claims against their employers. Craven v. Fulton Sanitation Serv., 361 Ark. 390, 206 S.W.3d 842 (2005).

Ark. R. Civ. P. 56 was not unconstitutional as it did not deny the patient her right to a jury trial where there were no factual disputes; instead, there were differing legal interpretations of undisputed facts. Scamardo v. Sparks Reg'l Med. Ctr., 375 Ark. 300, 289 S.W.3d 903 (2008).

Construction.

The right to a jury trial set out in Ark. Const. Art. 2, § 7 is unaffected by Ark. Const. Amend. 80, as section 7 does not assure the right to a jury trial in all possible instances, but rather in those cases where the right to a jury trial existed when the constitution was framed; further, the right to a jury trial does not apply to new rights created by the legislature since the adoption of the Arkansas Constitution. First Nat'l Bank of Dewitt v. Cruthis, 360 Ark. 528, 203 S.W.3d 88 (2005).

There were no undisputed facts that warranted proceeding to a jury trial; the circuit court determined as a matter of law that the city had an affirmative defense to the employee's whistle-blower claim in that his termination was the result of his violating departmental rules and policies. As the circuit court reasoned, the employee should not be allowed to force the city to prove that misconduct yet again. Barrows v. City of Fort Smith, 2010 Ark. 73, — S.W.3d — (2010).

Appeal from District Court.

Because defendant failed to file a certified record of the district court proceedings on his driving while intoxicated trial with the circuit court clerk within 30 days of the district court judgment, as required by Ark. R. Crim. P. 36(b), the circuit court had no jurisdiction over his appeal, even though defendant's right to jury trial was thereby lost. Roberson v. State, 2010 Ark. 433, — S.W.3d — (2010).

Court Rules.

Trial court's standard practice of requiring a defendant to request a jury at least 48 hours before trial was not in accordance with the Arkansas Constitution or the Arkansas Rules of Criminal Procedure; the notice requirement put a defendant in the position of forfeiting his or her right to a jury trial due to inaction. Swindle v. State, 373 Ark. 519, 285 S.W.3d 200 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 456 (Sept. 18, 2008), cert. denied, Swindle v. Arkansas, — U.S. —, 129 S. Ct. 1616, 173 L. Ed. 2d 994 (2009).

Equity.

In case involving an approval of a trust accounting, two beneficiaries were not entitled to a jury trial under this section because the relief sought was equitable in nature. Moreover, the question of an accounting could not have been submitted to a jury as if it was a suit for the recovery of money. In re Estates McKnight v. Bank of Am., N.A., 372 Ark. 376, 277 S.W.3d 173 (2008).

Number of Jurors.

Denial of defendant's motion for a mistrial was appropriate because he invited the alleged error. If he had not agreed to start his trial without alternate jurors, then the circuit court could have seated some when the trial began; defendant had to have known that his second cousin had been seated as a juror and yet he let the matter go until she was dismissed. Marshall v. State, 102 Ark. App. 175, 283 S.W.3d 597 (2008).

Tort Actions.

In a wrongful death suit brought against a medical center, a husband was not unconstitutionally denied his right to a jury trial under this section, because no factual issues existed as to whether the medical center was entitled to governmental and charitable immunity. Anglin v. Johnson Reg'l Med. Ctr., 375 Ark. 10, 289 S.W.3d 28 (2008).

Waiver.

In a felony non-support case, where counsel requested a jury trial at the pretrial hearing but the case proceeded as a bench trial, the appellate court held that defendant was denied his right to a jury trial as the record was silent as to whether defendant had knowingly, intelligently, and understandingly waived his right to a jury trial. Burrell v. State, 90 Ark. App. 114, 204 S.W.3d 80 (2005).

Dismissal of defendant's appeal on the grounds that his attorney failed to appear at a pretrial hearing was improper; where dismissal of the appeal from district court was not authorized by former § 16-96-508, the effect of the trial court's action was to deny defendant his right to a jury trial without the express waiver thereof required by the Arkansas Constitution. Ayala v. State, 92 Ark. App. 356, 214 S.W.3d 282 (2005), rev'd, 365 Ark. 192, 226 S.W.3d 766 (2006).

Dismissal of defendant's appeal of his conviction in the city court was improper as the dismissal would waive defendant's right to a jury trial, which he did not waive; defendant neither personally made an express declaration in writing or in open court, nor did counsel make the waiver in open court in the presence of the defendant. Ayala v. State, 365 Ark. 192, 226 S.W.3d 766 (2006).

Cited: Crawford v. Cashion, 2010 Ark. 124, — S.W.3d — (2010).

§ 8. Criminal charges — Self-incrimination — Due process — Double jeopardy — Bail.

RESEARCH REFERENCES

ALR. Application of Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) and Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002) to state death penalty proceedings. 110 A.L.R.5th 1.

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What Constitutes "Custodial Interrogation" at Hospital by Police Officer Within Rule of Miranda v. Arizona Requiring that Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation — Suspect Hospital Patient. 30 A.L.R.6th 103.

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What Constitutes "Custodial Interrogation" by Police Officer Within Rule of Miranda v. Arizona Requiring that Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation — At Police Vehicle, Where Defendant Outside, but in Immediate Vicinity. 34 A.L.R.6th 1.

What Constitutes "Custodial Interrogation" by Police Officer Within Rule of Miranda v. Arizona Requiring that Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation — At Police Vehicle, Where Defendant in Moving Vehicle, or Where Unspecified as to Whether Vehicle Moving or Stationary. 35 A.L.R.6th 127.

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What Constitutes "Custodial Interrogation" Within Rule of Requiring That Suspect Be Informed of His Federal Constitutional Rights Before Custodial Interrogation — Private Security Guards, Detectives, or Police. 51 A.L.R.6th 219.

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What Constitutes "Custodial Interrogation" by Police Officer Within Rule of Miranda v. Arizona Requiring That Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation — At Nonpolice Vehicle for Traffic Stop, Where Defendant Outside, But in Immediate Vicinity of Vehicle, or Where Unspecified as to Whether Inside or Outside of Nonpolice Vehicle. 55 A.L.R.6th 513.

Construction and Application of Constitutional Rule of *Miranda* — Supreme Court Cases. 17 A.L.R. Fed. 2d 465.

U. Ark. Little Rock L. Rev. Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 U. Ark. Little Rock L. Rev. 681.

CASE NOTES

Analysis

Bail.

Petitioner was awarded certiorari relief after a trial court denied petitioner bail after petitioner was charged with violating an order of protection because petitioner was not charged with a capital offense; the trial court should have set a reasonable bail with whatever terms and restrictions were deemed appropriate. Hobbs v. Reynolds, 375 Ark. 313, 289 S.W.3d 917 (2008).

Double Jeopardy.

At the beginning of defendant's rape trial, voir dire was conducted by both parties and a jury was selected but not sworn; due to a four-month delay in trial while the parties awaited the results from the crime lab, the circuit court ordered a mistrial. Because the jury had not been sworn under oath, double jeopardy did not attach under this section. Williams v. State, 371 Ark. 550, 268 S.W.3d 868 (2007).

Trial court did not abuse its discretion in finding that, as a result of defense counsel bringing a live explosive into court without permission, there was an overruling necessity for terminating the trial and therefore the Double Jeopardy Clause did not preclude the state from bringing defendant to trial a second time. There was a concern that members of the jury, who had been evacuated from the courthouse, observed police officers in handling the explosive. Koster v. State, 374 Ark. 74, 286 S.W.3d 152 (2008).

Defendant waived his double-jeopardy defense by entering into a plea agreement that he would become subject to the full range of punishment for his original charges in the event of a breach. Green v. State, 2009 Ark. 113, 313 S.W.3d 521 (2009).

Mistrial was not justified when defense counsel's opening statement purportedly changed the theory of defense in a murder trial from self defense to accident; because the court could have taken corrective measures and proceeded with trial, the mistrial was unjustified, and this section precluded any subsequent prosecution. Shelton v. State, 2009 Ark. 388, 326 S.W.3d 429 (2009).

The Fifth Amendment's and this section's double jeopardy clauses did not bar defendant's retrial on capital-murder and first-degree murder charges because, although the jury forewoman announced in open court that the jury had found defendant not guilty on those charges, the jury had deadlocked on a manslaughter charge, a mistrial was declared, and there were no "findings" or "verdicts"; a trial court's declaration of a mistrial because of a hung jury was not an event that terminated the original jeopardy to which defendant was subjected, and the mere read-

ing of the jury's verdict in open court did not constitute an acquittal. Neither the giving of the transitional instruction nor the forewoman's announcement negated the bedrock principle that a judgment was not valid until entered of record. Blueford v. State, 2011 Ark. 8, — S.W.3d — (2011).

Circuit court properly denied defendant's motion to dismiss his retrial on double jeopardy grounds based on a Brady violation in his first trial, discovered after reversal on other grounds. Double jeopardy applied only if the conduct giving rise to a successful motion for a mistrial was intended to provoke defendant into moving for a mistrial, and here, there was a grant of a new trial followed by a motion seeking dismissal of the charges based on prosecutorial misconduct during the previous trial. Green v. State, 2011 Ark. 92, — S.W.3d — (2011).

Denial of defendant's motions to bar his retrial on the charge of first-degree murder were proper because his trial ended in a mistrial without a final verdict entered in the record, and there was no actual verdict of acquittal. Neither the transitional jury instruction nor the jury's written status report of the vote on the lesser-included charge negated the requirements for a formal verdict and there was no merit to defendant's arguments that the jury's note reflecting its vote on the lesser-included offense of second-degree murder constituted an implicit acquittal on the charge of first-degree murder, and that entry of the jury's note into the record rendered it controlling for the purpose of jeopardy on first degree. Basham v. State, 2011 Ark. App. 384, — S.W.3d — (2011).

—Appeal.

Defendant could not be retried on the same charge regardless of whether his acquittal was a result of the trial judge's legal error; further, the acquittal was based on matters of guilt or innocence despite the legal error and, thus, double jeopardy prevented retrial. Carter v. State, 365 Ark. 224, 227 S.W.3d 895 (2006), cert. denied, Arkansas v. Carter, 549 U.S. 943, 127 S. Ct. 136, 166 L. Ed. 2d 253 (2006).

—Criminal Insanity.

Trial court's refusal to honor defendant's request for a mental examination prior to revocation of a suspended sentence was not a violation of defendant's due process rights. Lamance v. State, 89 Ark. App. 60, 200 S.W.3d 475 (2004).

—Fraud.

Double jeopardy did not mandate the dismissal of fraud charges arising from Medicaid claims because defendant was not being prosecuted for the same offenses or being threatened with punishment for a prior offense; prior charges against defendant for fraud against insurers had been dismissed. Dilday v. State, 369 Ark. 1, 250 S.W.3d 217 (2007).

—Multiple Offenses.

Pursuant to § 5-1-110(d)(1), defendant's convictions for both first-degree murder and the underlying felony of aggravated robbery were authorized by the legislature and his convictions did not violate the federal or state Double Jeopardy Clauses. Hudson v. State, 85 Ark. App. 85, 146 S.W.3d 380 (2004).

Defendant was properly convicted of capital murder and arson after he told a neighbor that his trailer home exploded while his girlfriend was inside; the constitutional prohibition against double jeopardy was not violated because § 5-1-110(d)(1)(A) permitted a sentence for both crimes. Meadows v. State, 358 Ark. 396, 191 S.W.3d 527 (2004).

Defendant's convictions for aggravated assault in violation of § 5-13-204(a) and use of a firearm in commission of a felony in violation of § 16-90-120 did not subject defendant to double jeopardy as the § 16-90-120 conviction was used to enhance a defendant's sentence. Davis v. State, 93 Ark. App. 443, 220 S.W.3d 248 (2005).

Defendant was not subjected to double jeopardy where he was convicted in one county of the rape of his step-daughter and pleaded guilty in another county to the rape of his step-daughter as his argument that the Hot Spring County and Saline County offenses were based on the same conduct was without merit. Anderson v. State, 93 Ark. App. 454, 220 S.W.3d 225 (2005).

Double jeopardy precluded a conviction and sentence for both attempted capital murder and its underlying felony; therefore, defendant's aggravated robbery conviction had to be merged with one count of attempted capital murder. Bunch v. State, 94 Ark. App. 247, 228 S.W.3d 534 (2006).

—Parole or Probation.

Prohibition against multiple trials was the controlling constitutional principle of double jeopardy and sentencing did not carry the finality that attached to an acquittal, which prohibited retrial; the Constitution did not require that sentencing should be a game in which a wrong move by the judge meant immunity for the prisoner. Shirley v. State, 84 Ark. App. 395, 141 S.W.3d 921 (2004).

—Sex Offender Registry.

Listed person's name was not removed from the Arkansas Child Maltreatment Central Registry under § 12-12-505 after his acquittal on certain sexual abuse charges because double jeopardy did not apply to the civil proceedings, and the elements of claim preclusion and issue preclusion were not met. The criminal and civil proceedings did not have the same issues or parties; moreover, the Arkansas Department of Health and Human Services did not have the opportunity to fully and fairly litigate its claim. Vancleave v. Arkansas HHS, 98 Ark. App. 299, 254 S.W.3d 770 (2007).

Due Process.

Attorney failed to prove that the decision to suspend his license to practice law for six months was a violation of his due process rights were he received notice of the complaint and the charges against him, was notified of Panel A's decisions, requested and received a public hearing before Panel B, attended the hearing, at which he represented himself, and was allowed to present evidence on his behalf. Stilley v. Supreme Court Comm. on Prof'l Conduct, 370 Ark. 294, 259 S.W.3d 395 (2007), cert. denied, Stilley v. Supreme Court of Ark. Comm. on Prof'l Conduct, 552 U.S. 1184, 128 S. Ct. 1248, 170 L. Ed. 2d 67 (2008).

Imposition of consecutive sentences was not in violation of defendant's due process rights or the Eighth Amendment to the U.S. Constitution where the trial judge noted that the sentences imposed on each count were less than the maximum and that the approach was consistent with other jury sentences in the country; the trial judge clearly exercised discretion in accepting the jury's recommendation. Ford v. State, 99 Ark. App. 119, 257 S.W.3d 560 (2007).

Trial court erred in dismissing a suit pursuant to Ark. R. Civ. P. 41(b) for plaintiff's failure to appear at the trial because, inter alia, it appeared on the record that plaintiff's case was dismissed based on her failure to attend a hearing of which she had no notice, which violated one of the basic tenets of due process. Jones v. Vowell, 99 Ark. App. 193, 258 S.W.3d 383 (2007).

Trial court erred in dismissing a suit pursuant to Ark. R. Civ. P. 41(b) for plaintiff's failure to appear at the trial because: (1) she had not received notice; (2) it could not be said that, pursuant to Rule 41(b), there had been no action shown on the record for the past 12 months; (3) the trial judge did not notify her, prior to the dismissal, that he intended to dismiss her complaint, as required by rule 41(b); and (4) the court should have complied with Rule 41(b) and given notice of its intention to dismiss; and (5) plaintiff's due process rights were violated. Jones v. Vowell, 99 Ark. App. 193, 258 S.W.3d 383 (2007).

In an action to increase nongas rates, the brevity of time in which the Arkansas Public Service Commission approved a gas company's tariffs did not violate a consumer group's due process rights because the group was not deprived of the opportunity to petition for rehearing under § 23-2-422(a). The group did not identify any property right before the Commission or the court of which it had been deprived, and it did not show any prejudice. Consumers Utils. Rate Advocacy Div. v. Ark. Pub. Serv. Comm'n, 99 Ark. App. 228, 258 S.W.3d 758 (2007).

In an action to increase nongas rates, a gas company's purchase transport program was a useful and necessary component of its gas procurement process that enhanced the company's ability to meet its statutory and regulatory requirements to provide reliable gas service while minimizing volatility and overall purchased-gas costs to ratepayers and should continue prospectively, and a consumer group pointed to no language in a prior order reserving the issue for the company's next rate case. Therefore, the group's due process rights were not violated under the group's assertion that the Arkansas Public Service Commission reserved the group's concerns for a future docket; the Commission, in fact, revisited these concerns in the present case. Consumers

Utils. Rate Advocacy Div. v. Ark. Pub. Serv. Comm'n, 99 Ark. App. 228, 258 S.W.3d 758 (2007).

Father's due process rights were not violated when a trial court allowed the Arkansas Department of Health and Human Services to amend a termination of parental rights petition on the day of the hearing to reflect that the child had been in its custody for 12 months or longer where the father was not prejudiced; the amendment was proper under Ark. R. Civ. P. 15(a). Smith v. Ark. HHS, 100 Ark. App. 74, 264 S.W.3d 559 (2007).

Saline County court did not violate defendant's due process rights in sentencing defendant as a habitual offender under § 5-4-501(b) after defendant was convicted of felonies in Pulaski County where defendant had notice of the state's intention to seek the enhancement before pleading guilty in Saline County. Misenheimer v. State, 100 Ark. App. 189, 265 S.W.3d 764 (2007).

Taxpayer's attempts to characterize the payment to the superintendent as private and one solely for his benefit failed; the severance payment was made for the public purpose of removing the superintendent to allow for the hiring of a new, and in the school board's judgment, a preferable superintendent to lead the Little Rock Public Schools. Gray v. Mitchell, 373 Ark. 560, 285 S.W.3d 222 (2008).

Minor was afforded the opportunity to confront and cross-examine adverse witnesses but waived his right by failing to present their testimony, and he could not argue on appeal that his due-process rights were violated; when compared to the government's interest in presenting its case without traumatizing child victims, the Department of Human Services was not and should not have been required to call the victim to testify. Ark. Dep't of Human Servs. v. A.B., 374 Ark. 193, 286 S.W.3d 712 (2008).

Where the Arkansas Department of Human Services did not make appellant a party to the dependency proceeding for two years despite knowing his putative fatherhood and terminated his parental rights without creating a case plan for him or providing family services, appellant was denied basic due process guarantees. Tuck v. Ark. Dep't of Human Servs., 103 Ark. App. 263, 288 S.W.3d 665 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 911 (Nov. 12, 2008), review denied, 375 Ark. 177, — S.W.3d — (2008).

Alleged sex offender's due process rights under the United States and Arkansas Constitutions were not violated by a determination that he was a Level 3 offender because he had a meaningful opportunity to be heard through a face-to-face interview and review by a sex offender assessment committee. A second face-to-face interview was not required. Burchette v. Sex Offender Screening & Risk Assessment Comm., 374 Ark. 467, 288 S.W.3d 614 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 772 (Dec. 4, 2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 773 (Dec. 4, 2008).

Defendant's due process rights were not violated where the trial court was not attempting to enlarge a criminal statute and was not changing, amending, or modifying defendant's sentence; it was simply vacating the plea agreement that was entered into between defendant and the state because defendant breached the agreement, and defendant had fair warning that he had to cooperate with the state. Green v. State, 2009 Ark. 113, 313 S.W.3d 521 (2009).

Rape shield statute, § 16-42-101(b), did not violate defendant's constitutional right to present a defense during defendant's trial for rape of a minor because defendant was able to cross-examine a physician, who testified that the injury to the victim's vaginal area was not a fresh injury, but occurred sometime in the past. Defendant was also able to cross-examine the victim about her allegations. Joyner v. State, 2009 Ark. 168, 303 S.W.3d 54 (2009), cert. denied, Joyner v. Arkansas, — U.S. —, 130 S. Ct. 736, 175 L. Ed. 2d 514 (2009).

Summary judgment was appropriate because there was no dispute that notice to the landowner of the pending tax sale was a single unclaimed letter sent by certified mail; some additional step reasonably calculated to give the landowner notice was required, and a mailing to the other landowners did not satisfy the requirements of due process. RWR Props. v. Young, 2009 Ark. App. 332, 308 S.W.3d 183 (2009).

In a case seeking the revocation of a suspended sentence, defendant failed to

show that there was a due process violation because he was present at a hearing, was provided the opportunity to hear and controvert evidence against him at the hearing, was provided the opportunity to offer evidence in his own defense, and was represented by counsel. Moreover, defendant failed to show that there was any prejudice, which was required for a reversal. Gholson v. State, 2009 Ark. App. 373, 308 S.W.3d 189 (2009).

Circuit court erred in holding an attorney in contempt for obtaining its signature on an amended judgment and commitment order by misrepresenting the state's approval and consent because a letter the circuit court addressed to the attorney provided adequate notice that a hearing would occur, but it did not give the attorney adequate notice that criminal contempt charges were pending against her; both Arkansas law and the Fourteenth Amendment to the United States Constitution were clear that the attorney was entitled to notice not only that the circuit court was investigating the possibility of her misrepresentation but also that it was considering holding her in criminal contempt for alleged misrepresentation. Bloodman v. State, 2010 Ark. 169, — S.W.3d — (2010).

In an action involving the judicial dissolution of a law firm, the trial court denied a creditor's right to due process on remand by failing to provide the creditor with a meaningful hearing and by incorrectly determining that he was barred from seeking relief where it held a hearing after funds had been distributed to shareholders and subsequently failed to provide any mechanism for enforcing the creditor's valid claim. Jewell v. Fletcher, 2010 Ark. 195, — S.W.3d — (2010), rehearing denied, Jewell v. Moser, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 332 (June 3, 2010).

Court rejected defendant's argument that he had a constitutional right to additional testing under the due process clause of this section. When DNA test results matched the person requesting additional testing, it was not fundamentally unfair to refuse additional testing. Isom v. State, 2010 Ark. 496, — S.W.3d — (2010), cert. denied, Isom v. Arkansas, — U.S. —, — S. Ct. —, — L. Ed. 2d —, 2011 U.S. LEXIS 4749 (U.S. June 20, 2011).

Trial court complied with the standards regarding certification for foreign language interpreters in Arkansas courts in §§ 16-89-104(a) and 16-10-127 as the standards established by the Arkansas courts expressly permitted a non-certified interpreter upon a finding that diligent and good faith efforts to obtain a certified interpreter were made and none had been found to be reasonably available. Diligent efforts were made to obtain a certified interpreter, and although the trial court was advised that there were no certification programs for the Kiti language, defendant was able to obtain the services of the interpreter at issue, who was certified and had experience as a Marshallese interpreter and also spoke Kiti. Ludrick v. State, 2011 Ark. App. 54, — S.W.3d — (2011), rehearing denied, — Ark. App. —, — S.W.3d —, 2011 Ark. App. LEXIS 170 (Mar. 2, 2011).

—Attorney Discipline.

Five-year waiting period for readmission to the bar at Ark. Sup. Ct. Prof. Conduct P. § 24 was properly applied to an attorney who had been disbarred in 2000, even though the rule did not exist at the time of the attorney's offending conduct, because such a waiting period was not a punishment. Cambiano v. Ark. State Bd. of Law Exam'rs, 357 Ark. 336, 167 S.W.3d 649 (2004).

—Child Maltreatment Registry.

In a case involving placement on a child maltreatment registry, appellant's due process rights under the Fourteenth Amendment and Ark. Const. art. 2, § 8 were not violated by the fact that an administrative law judge and a prosecutor came from the same agency; moreover, the standard of evidence was not changed to clear and convincing. Appellant did not show that he would have prevailed had the standard been higher; moreover, he failed to show that he was denied a specific employment opportunity due to his placement on the registry. C.C.B. v. Arkansas HHS, 368 Ark. 540, 247 S.W.3d 870 (2007).

—Civil Proceedings.

Ark. R. Civ. P. 55 does not violate due process because defendants suffering default judgments are given notice of the pending suit through service of the original complaint and summons; they are

presumed to know that if they do not respond they will suffer default judgments and may suffer a monetary judgment against them. McGraw v. Jones, 367 Ark. 138, 238 S.W.3d 15 (2006).

Debtor, who had defaulted on her mortgage, alleged that the notice provisions of § 18-50-104 failed to comport with due process requirements; however, there was no state action involved in the foreclosure procedure, and mere passage of the Arkansas Statutory Foreclosure Act did not mean that there was state action or state officials involved. Parker v. BancorpSouth Bank, 369 Ark. 300, 253 S.W.3d 918 (2007).

In a case where relief was sought from a foreclosure proceeding based on defective service under Ark. R. Civ. P. 4, two debtors waived the issue since they recognized the action was in court and made an appearance at the foreclosure proceeding by agreeing to the entry of an order appointing a receiver; therefore, there was no due process violation. Moreover, Rule 4(i) was satisfied because the entry of the order appointing the receiver occurred well within the 120-day period provided for service. Trelfa v. Simmons First Bank of Jonesboro, 98 Ark. App. 287, 254 S.W.3d 775 (2007).

—Criminal Proceedings.

Requirement under § 16-89-108(a) and Ark. R. Crim. P. 31.1, that a prosecutor approve defendant's request to plead guilty and waive a jury trial, did not violate defendant's due process rights because the sentencing scheme codified at § 16-90-801 et seq. did not create a liberty interest in protecting from exposure to higher ranges of sentences. Whitlow v. State, 357 Ark. 290, 166 S.W.3d 45 (2004).

Court properly denied a petition for writ of error coram nobis based on the state's alleged withholding of exculpatory DNA test results because, contrary to petitioner's assertion that the DNA results would have exonerated him or impeached the victim, the testimony presented by the victim at trial was that petitioner orally raped her twice, and the evidence at the hearing was that samples taken from the victim for DNA testing were vaginal, not oral, swabs; thus, the DNA results were neither favorable nor unfavorable and were, therefore, not material. Cloird v. State, 357 Ark. 446, 182 S.W.3d 477 (2004).

Murder victim's statements to detective regarding his being robbed by defendant's cousin did not constitute hearsay under Ark. R. Evid. 801(c) and their admission in defendant's trial for murder was not barred by the Confrontation Clause where they were admitted to demonstrate the basis of detective's actions in seeking an arrest warrant for defendant's cousin and to establish defendant's motive for killing the victim, rather than for the truth of the matter asserted in the statements. Dednam v. State, 360 Ark. 240, 200 S.W.3d 875 (2005).

Denial of defendant's motion to reinstate his appeal did not violate his due process rights where defendant's appeal was dismissed after he escaped from custody and fled the jurisdiction, and defendant failed to give any satisfactory reason for an almost 17-year delay in filing his motion for reinstatement. Bargo v. State, 364 Ark. 197, 217 S.W.3d 825 (2005).

In determining whether a trial court erred in refusing a jury instruction in a criminal trial, the test is whether the omission infects the entire trial such that the resulting conviction violates due process; hence, the court did not err in not instructing the jury on mental disease or defect in defendant's murder trial because defendant had not asserted a defense of mental disease or defect. Sharp v. State, 90 Ark. App. 81, 204 S.W.3d 68 (2005).

Trial court did not err in denying defendant's motion to suppress the statement he made to an officer who stopped him admitting that he knew his license was suspended; no Miranda warning was needed because, at the time of the statement, defendant sat in his car on the side of the road, he was never arrested, and after the officer gave him the traffic citation he was free to go. Gorman v. State, 366 Ark. 82, 233 S.W.3d 622 (2006).

Because habeas petitioner had not sought postjudgment relief from the circuit court on the basis that he had been denied due process of law by the court's alleged failure to follow several procedural requirements as set forth in § 16-112-201 through 207, including the fact that the prosecuting attorney had failed to file an answer within 20 days, the Court was precluded from addressing the appeal as the due-process claims were not preserved for appellate review. Randall v.

State, 368 Ark. 279, 244 S.W.3d 662 (2006).

Trial court did not abuse its discretion and defendant's constitutional right to testify was not violated where he clearly and on the record stated his intention not to testify in response to a direct question put to him by the trial court at the close of the evidence; defendant requested that he be able to testify only after counsel had conferred in chambers to prepare jury instructions. Henson v. State, 94 Ark. App. 163, 227 S.W.3d 450 (2006).

Witness's testimony did not violate Brady where leniency had not been offered to the witness by the state at the time the witness testified against defendant, defendant's counsel failed to inquire as to whether the witness expected leniency in exchange for his testimony, and the fact that the witness's attorney subsequently called the prosecutor's office and a plea agreement was reached had no bearing on the credibility of the previous testimony at the time of defendant's trial. Higgins v. State, 94 Ark. App. 328, 230 S.W.3d 316 (2006).

Where an accused is tried in prison garb, his right to a fair trial is placed in serious jeopardy; thus, the need to accommodate the jury and to save time cannot be paramount. Croston v. State, 95 Ark. App. 157, 234 S.W.3d 909 (2006).

Trial court did not err in requiring defendant to appear for trial in jail attire where the state provided evidence that he was offered civilian clothing for his court appearance but refused to wear it because it was allegedly too small and defense counsel presented no evidence to dispute the refusal. Croston v. State, 95 Ark. App. 157, 234 S.W.3d 909 (2006).

Although defendant claimed that he was denied the ability to present evidence of the context in which the sexual abuse allegations were made and thus was unable to adduce significant evidence of the victim's true motive, defendant elicited testimony during the trial from the victim as to another possible motive for accusing defendant; thus, it was not that defendant was not allowed to present a defense, but rather that he was not allowed to present the defense he wanted due to the exclusion of the victim's prior sexual conduct, which was proper under § 16-42-101(b). Jackson v. State, 368 Ark. 610, 249 S.W.3d 127 (2007), cert. denied, Jackson v. State, 552 U.S. 850, 128 S. Ct. 112, 169 L. Ed. 2d 79 (2007).

Trial court erred in revoking defendant's suspended sentences on the ground that defendant violated the terms and conditions of good conduct because a violation of good conduct was not alleged in the petition to revoke, nor was a requirement to conform to good conduct contained in the written terms and conditions of defendant's suspended sentences. Harris v. State, 98 Ark. App. 264, 254 S.W.3d 789 (2007).

It is fundamentally unfair to revoke probation on the basis of a violation not mentioned in the revocation petition because a defendant cannot properly prepare for the hearing without knowing in advance what charges of misconduct are to be investigated as a basis for the proposed revocation of the probation. Harris v. State, 98 Ark. App. 264, 254 S.W.3d 789 (2007).

—Discovery.

No discovery violation was found where (1) there was no evidence pursuant to subsection (b) of this rule indicating that certain files defendant sought were in the hands of any state agency or were subject to the jurisdiction of the court, (2) it was impossible to tell from the record precisely what information defendant had sought, and (3) there was no indication that material evidence existed that was required to be turned over to defendant based on due process considerations. Jimenez v. State, 83 Ark. App. 377, 128 S.W.3d 483 (2003).

—Habeas Corpus.

There was no violation of appellant's due process rights for entitlement to habeas corpus relief where appellant had been sentenced to five years' probation and fined for first-degree sexual abuse, a trial court properly sentenced him to 10 years in prison upon revocation of probation under § 5-4-309(f) because appellant could have originally received that term under §§ 5-14-108 and 5-4-401(a)(4) and there had been no sentence imposed that had been improperly modified under §§ 5-4-301(d) (1997) or 16-93-402(e). Rickenbacker v. Norris, 361 Ark. 291, 206 S.W.3d 220 (2005).

—New Trial.

Following a new trial, the factual data upon which the increased sentence is

based must be made part of the record, so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal. Townsend v. State, 355 Ark. 248, 134 S.W.3d 545 (2003).

Defendant established a prima facie due process violation where the state filed an amended information alleging habitual-offender status on remand of his criminal trial, causing defendant to receive a harsher penalty after the new trial, however, the state sufficiently rebutted the presumption of vindictiveness; the state filed the amended information only after defendant was convicted of several felonies while awaiting his new trial on remand. Townsend v. State, 355 Ark. 248, 134 S.W.3d 545 (2003).

In order to assure the absence of a motivation for vindictiveness, whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear; those reasons must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. Townsend v. State, 355 Ark. 248, 134 S.W.3d 545 (2003).

—Parental Rights.

Because a mother failed to file a timely notice of appeal pursuant to Ark. R. App. P. Civ. 2 from the trial court's adjudication order, the appellate court was unable to consider the mother's arguments relating to errors made during the adjudication hearing; however, the appellate court did consider whether the trial court's failure to provide counsel, pursuant to § 9-27-316, to the mother during the adjudication hearing tainted the remainder of the case, which resulted in termination of parental rights and found no such taint. Jefferson v. Ark. Dep't of Human Servs., 356 Ark. 647, 158 S.W.3d 129 (2004).

Order terminating mother's parental rights to her two children was upheld where the mother had notice of the hearing and was given the opportunity to voice her objection to the fact that the trial court failed to order a continuation of reunification services and that those services were not provided to her. Kight v. Ark. Dep't of Human Servs., 94 Ark. App. 400, 231 S.W.3d 103 (2006).

In an adoption case, where the putative father was served with a summons, petition for adoption, notice of hearing, and notice of deposition on December 14, 2004, and the hearing was held on December 20, 2004, the notice given the father satisfied the requirements of due process.Escobedo v. Nickita, 365 Ark. 548, 231 S.W.3d 601 (2006).

—Regulation of Business.

In keeping with the provisions of § 18-27-201, the court held that an interest acquired by a pawn shop in pawned goods constituted a sufficient property interest to warrant due process protection and the joint participation between the police department and the true owner of the goods in depriving the shop of the use of the goods constituted state action; thus, §§ 18-27-202 and 18-27-203 were unconstitutional in mandating the pawn shop to return the goods to the owner based merely on the owner's request before a judicial determination of ownership had taken place and in assessing attorney fees and costs against the shop after the owner was subsequently adjudicated the true owner. Landers v. Jameson, 355 Ark. 163, 132 S.W.3d 741 (2003).

Amendment to § 4-75-702(1) and (5)(B) that increased the presumed "cost of doing business" from two and three-quarters percent to four percent of the basic cost of the cigarettes to a wholesaler did not violate the due process protections of the Arkansas or U.S. Constitutions; there was a rational basis for the amendment, as the legislature could have found that changed market conditions supported an increase in the cost of doing business. McLane S., Inc. v. Davis, 366 Ark. 164, 233 S.W.3d 674 (2006).

Because rebates make it more difficult to enforce and administer the Arkansas Unfair Cigarette Sales Act, § 4-75-701 et seq., the legislature may have decided to prohibit them; thus, the anti-rebate provisions found in § 4-75-708(e) do not violate the due process protections of the Arkansas or U.S. Constitutions. McLane S., Inc. v. Davis, 366 Ark. 164, 233 S.W.3d 674 (2006).

Amendment to § 4-75-702(5)(B) merely clarified where and generally what type of proof a wholesaler must file in order to make a below-cost sale of cigarettes; these changes do not cause § 4-75-702(5)(B) to violate the due process protections of the Arkansas or U.S. Constitutions. McLane

S., Inc. v. Davis, 366 Ark. 164, 233 S.W.3d 674 (2006).

—Sex Offender Registration.

Regardless of the reason one was required to register as a sex offender, the procedures afforded by the Sex Offender Registration Act, § 12-12-901 et seq., were the same; those procedures comported with procedural due-process requirements. Ark. Dep't of Corr. v. Bailey, 368 Ark. 518, 247 S.W.3d 851 (2007).

—Taxation.

Where state had attempted to provide the property owners and delinquent tax payers with notice, both via certified mail and through publication in the newspaper, it had complied with the provisions of § 26-37-301 and the tax sale was valid. Jones v. Flowers, 359 Ark. 443, 198 S.W.3d 520 (2004), rev'd, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

—Vagueness.

Terms "trade discount" and "rebate" were unclear under existing Unfair Cigarette Sales Act, § 4-75-701 et seq., and the tobacco control board's regulations as to what was an allowed "trade discount" as opposed to a prohibited "rebate" were unclear; thus, the law was unconstitutionally vague under due process standards because it did not give a person of ordinary intelligence fair notice of what was prohibited, specifically, whether payments to the retailer were permitted "trade discounts" or prohibited "rebates." Ark. Tobacco Control Bd. v. Sitton, 357 Ark. 357, 166 S.W.3d 550 (2004).

Section 5-64-1006 was not impermissibly vague as applied and did not violate the due process guarantee in this section, because the statute and its supporting regulations were specific enough to provide fair notice that one was required to report to the Arkansas State Board of Pharmacy when one's customers were likely to be using List 1 chemicals to illegally manufacture a controlled substance. Landmark Novelties, Inc. v. Ark. State Bd. of Pharm., 2010 Ark. 40, — S.W.3d — (2010).

Prisoner's Rights.

Inmate was not denied equal protection where he alleged that the prison failed to follow a requirement to purchase electronic monitoring devices because the requested declaratory relief would not settle the controversy as the directive was clearly subject to the prison's discretion and did not require the purchase of the equipment. The directive did not articulate a specific requirement to purchase the devices or any other equipment; the policy only established conditions and requirements for approved inmates, and because the prison had not approved, and was not required to approve, inmates serving life sentences for meritorious furlough, the prisoner did not show that he could have any potential liberty interest in furlough. Dukes v. Norris, 369 Ark. 511, 256 S.W.3d 483 (2007).

Right to Counsel.

Defendant's statement was spontaneous and not the product of custodial interrogation; the mere fact that the officer sat silently in the interview room with defendant for a brief period of time while he looked over his case file was not the sort of coercive police practice or psychological ploy that Miranda was designed to guard against, nor was the officer's request for handwriting samples because such evidence, which was sought only for comparison purposes, was not testimonial in nature and therefore not protected. State v. Pittman, 360 Ark. 273, 200 S.W.3d 893 (2005).

In a termination of parental rights proceeding, even though the trial court erred in denying the parents' request to proceed pro se, by their own admission that error did not cause them to suffer prejudice. Williams v. Ark. HHS, 99 Ark. App. 95, 257 S.W.3d 574 (2007).

Defendant's convictions and sentences for capital murder and kidnapping were inappropriate because counsel was not made available to defendant, nor did defendant initiate contact. The illegal statement was made at 7:25 p.m. and concluded at 7:35 p.m., and the subsequent confession was taken at 8:55 p.m.; defendant was in no way free of the psychological and practical disadvantages of having had confessed and he was in continuous custody between the two statements and the same investigators participated in both. Osburn v. State, 2009 Ark. 390, 326 S.W.3d 771 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 584 (Sept. 10, 2009), cert. denied, Arkansas v. Osburn, — U.S. —, 130 S. Ct. 1522, 176 L. Ed. 2d 113 (2010).

None of defendant's statements unambiguously and unequivocally indicated defendant's right to remain silent or a right to counsel; defendant was conscious of his Miranda rights and he continued to talk to the officer and answer his questions even though he knew it was against his best interest, and there was no error in allowing the indicated portions of the custodial statement. Sykes v. State, 2009 Ark. 522, — S.W.3d — (2009).

Self-Incrimination.

Trial court did not err in denying defendant's motion to suppress statements he made to the police even though he had been shot, admitted he had taken drugs, and was given pain medication as there was no indication that defendant was in too much pain to talk and defendant never indicated that he wanted the questioning to stop. Holloway v. State, 363 Ark. 254, 213 S.W.3d 633 (2005).

Court did not err in concluding that a juvenile defendant with an IQ of 68 voluntarily signed the Miranda waiver form where he was carefully explained his rights, the process was free from coercion, and defendant did so with full awareness of the nature of the rights being waived and the consequences of the decision to abandon them. Otis v. State, 364 Ark. 151, 217 S.W.3d 839 (2005).

Defendant's statement that a crack pipe was his was properly admitted into evidence because, although defendant had been arrested and no Miranda warning had been given, no officer was interrogating defendant when he made the statement; thus, defendant's self-incrimination privilege was not violated. Swan v. State, 94 Ark. App. 115, 226 S.W.3d 6 (2006).

Trial court did not err in allowing defendant's confession to capital murder as the police had properly advised defendant of his Miranda rights, and the totality of the circumstances surrounding the interrogation by the police revealed both an uncoerced choice and the requisite level of comprehension by defendant. Wilkerson v. State, 365 Ark. 349, 229 S.W.3d 896 (2006).

Trial court did not err by refusing to suppress defendant's statement to jailer as defendant clearly initiated communication with the police and waived her right to counsel.Vidos v. State, 367 Ark. 296, 239 S.W.3d 467 (2006).

Motion to suppress statements made in a drug case was properly denied because a trial court believed an officer's statement that both defendants made voluntary statements about pills found in a truck after their rights were read; defendants stated that they were purchasing pseudoephedrine so that a friend could cook drugs. Champlin v. State, 98 Ark. App. 305, 254 S.W.3d 780 (2007).

Defendant's confession was voluntary because the only evidence of police misconduct was defendant's self-serving testimony; an officer testified that he did nothing to induce the confession, and neither he nor another officer told defendant that they would keep defendant from going to jail. Bell v. State, 371 Ark. 375, 266 S.W.3d 696 (2007).

Defendant's confession was voluntary because there was no evidence of threats on the videotaped portion of defendant's statement or any physical evidence of force being used on defendant, defendant was 34 years old, there was no indication that he had a below-normal intelligence, and the statement was taken within a few hours after defendant's arrest and after only a short period of interrogation. Goodwin v. State, 373 Ark. 53, 281 S.W.3d 258 (2008).

Confession given in a murder case was not suppressed; defendant was an adult with a high-school equivalency education, he was coherent, and he was in fair physical condition. Neither the fact that defendant had known one of the officers involved for many years nor the officer's offer of help rendered the statement involuntary. Seaton v. State, 101 Ark. App. 201, 272 S.W.3d 854 (2008).

Officer was not required to read defendant his Miranda rights prior to questioning him about an attempt to use a company credit card to buy a large amount of gas because a detention for up to 15 minutes was permitted under Ark. R. Crim. P. 3.1. Lee v. State, 102 Ark. App. 23, 279 S.W.3d 496 (2008).

There is no constitutional right to recordation of all phases of police interrogation leading to a confession under the Due Process Clause of this section. No Arkansas law requires the police to record an interrogation in its totality, and while an appellate court reviewing the voluntary nature of a confession will consider the absence of a recording as a factor in the

totality of the circumstances mix, the court will not invalidate a confession for that reason alone. Clark v. State, 374 Ark. 292, 287 S.W.3d 567 (2008).

Sex Offender Screening and Risk Assessment Committee's use of statements the sex offender made during the assessment process, under a grant of immunity, to assess him as a level four offender, did not violate his privilege against self-incrimination under this section. The assessment and ultimate classification of a sex offender pursuant to the Sex Offender Registration Act are not criminal in nature, and one's privilege against self-incrimination may only be violated where one's own statements are used against one in a proceeding criminal in nature. Parkman v. Sex Offender Screening & Risk Assessment Comm., 2009 Ark. 205, 307 S.W.3d 6 (2009).

As defendant was not restrained in any way while sitting in an officer's car after a routine traffic stop, and the officer's actions and questioning up until he Mirandized defendant after learning of a warrant for his arrest did not rise to those of a formal arrest, there had been no custodial interrogation and Miranda warnings had not been required. Marcyniuk v. State, 2010 Ark. 257, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 402 (Aug. 6, 2010).

Denial of defendant's motion for a new trial after he had been convicted of rape was appropriate because statements commenting on the lack of evidence were clearly directed towards rebutting the defensive strategy and did not constitute impermissible references to defendant's failure to testify. Because the remarks were not improper, counsel was not ineffective for failing to preserve an argument that those remarks were improper. Rounsaville v. State, 2011 Ark. 236, — S.W.3d — (2011).

—Abridgement of Right.

Supreme Court rejected defendant's claim he was entitled to a mistrial because an officer's testimony, that defendant had been "in and out of jail," forced him to testify as to the innocuous reasons for this where the record showed defendant intended to take the stand before the prejudicial statement was made, it was not so patently prejudicial that it precluded him from obtaining a fair trial, the prosecutor had not deliberately induced a prejudicial response, and the trial court gave a curative admonition to the jury. Parker v. State, 355 Ark. 639, 144 S.W.3d 270 (2004).

Trial court did not err in denying defendant's motion to suppress statements that were made while in custody as defendant had been given his Miranda warnings when he was first arrested and, during the course of an interview the following day, defendant made his incriminating statements that were not in response to any direct questioning by the officers. Williams v. State, 363 Ark. 395, 214 S.W.3d 829 (2005).

—Confessions.

In a sexual abuse case, the court properly denied defendant's motion to suppress his confession where it was voluntarily made and he offered no evidence to establish a nexus between the conduct of the police and his statement, nor anything that would have proven a link between "coercive activity of the State" and his resulting confession; defendant did not claim that he confessed because the police directed someone to beat him up in his cell the night before he gave his statement, nor did he allege any kind of actual police coercion of any sort but, instead, simply argued that the officer knew that people charged with crimes against children were treated badly. Standridge v. State, 357 Ark. 105, 161 S.W.3d 815 (2004).

In defendant's rape case, the court properly denied defendant's motion to suppress his confession where defendant was informed of his Miranda rights, he signed a statement-of-rights form, and the officer did not make any threats or promises in exchange for the confession. Pratt v. State, 359 Ark. 16, 194 S.W.3d 183 (2004), dismissed, — Ark. —, — S.W.3d —, 2005 Ark. LEXIS 430 (June 30, 2005).

Trial court properly denied defendant's motion to suppress incriminating statements he made to his friend who was wearing a recording device for police because, when defendant made the statement to his friend, they were sitting on a park bench with no police visible or restriction of defendant's freedom; the fact that the friend was acting as an agent of the police did not render the setting "custodial" in any sense. Hall v. State, 361 Ark. 379, 206 S.W.3d 830 (2005).

—Waiver.

Defendant voluntarily waived his Miranda rights where he verbally indicated that he understood them, he initialed each of his responses and signed the waiver, and defendant appeared to be alert and responsive and did not seem to have any problem understanding his rights as they were explained to him. Flowers v. State, 362 Ark. 193, 208 S.W.3d 113 (2005).

Where (1) detective spoke with defendant in an interview room and said he would like to speak with defendant regarding the case, (2) defendant invoked his right to remain silent and his right to counsel, (3) the detective then proceeded to question defendant only regarding a criminal investigation division (CID) information form, and (4) defendant spontaneously indicated that he wanted to talk and was then given his Miranda rights, there was no evidence of coercion and it was clear that defendant was aware of the consequences of abandoning his right to remain silent and to have counsel present during questioning; thus, the trial court did not err in denying defendant's motion to suppress his custodial statement. Marshall v. State, 92 Ark. App. 188, 211 S.W.3d 597 (2005).

Defendant's statement to police was voluntary because his statement, "you'll furnish me a public defender," was an equivocal request for counsel, made in the middle of the officer's recitation of the rights on the Miranda form, signifying that defendant was merely repeating what the officer had just told him; further, defendant indicated that he understood his rights and he signed the waiver of rights form. Holsombach v. State, 368 Ark. 415, 246 S.W.3d 871 (2007).

Cited: Hathcock v. State, 357 Ark. 563, 182 S.W.3d 152 (2004); Clark v. State, 358 Ark. 469, 192 S.W.3d 248 (2004); Young v. State, 370 Ark. 147, 257 S.W.3d 870 (2007).

§ 9. Excessive bail or punishment prohibited — Witnesses — Detention.

RESEARCH REFERENCES

ALR. Propriety of carrying out death sentences against mentally ill individuals. 111 A.L.R.5th 491.

Application of constitutional rule of Atkins v. Virginia, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002), that execution of mentally retarded persons constitutes "cruel and unusual punishment" in violation of Eighth Amendment. 122 A.L.R.5th 145.

When does forfeiture of real property violate excessive fines clause of Eighth Amendment or state constitutions — State cases. 124 A.L.R.5th 509.

Ark. L. Rev. Note: Henderson v. Arkansas: One Strike and You're Out — Does the Arkansas Constitution Provide Its Citizens with More Protection Than the United States Constitution in the Context of Cruel and/or Unusual Punishment?, 56 Ark. L. Rev. 229.

Note, Pass the Discretion Please — The Supreme Court Defers to State Legislatures in Interpreting What is Left of the Eighth Amendment's Proportionality Principle, 58 Ark. L. Rev. 425.

The New Judicial Federalism Takes Root in Arkansas, 58 Ark. L. Rev. 883.

CASE NOTES

Analysis

Punishment.
Victim Impact Statute.

Punishment.

Inmate who asserted wool blankets caused him to suffer rashes did not show a serious medical need that would have supported a claim of a violation of this section or § 16-123-105 of the Arkansas Civil Rights Act; the inmate's condition was not one that mandated treatment even though it may have been diagnosed by a doctor and, while the evidence showed he indeed suffered from discomfort and rashes, he had been provided with adequate treatment for those symptoms. Williams v. Ark. Dep't of Corr., — Ark. —, 207 S.W.3d 519 (2005), rehearing denied, — Ark. —, — S.W.3d —, 2005 Ark. LEXIS

381 (June 16, 2005), cert. denied, 546 U.S. 1018, 126 S. Ct. 647, 163 L. Ed. 2d 531 (2005).

Judgment entered against a prison warden in a state prison inmate's 42 U.S.C.S. § 1983 and Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., suit was reversed because the evidence did not support the district court's finding that the warden was deliberately indifferent to the inmate's safety, in violation of the inmate's rights under U.S. Const. Amend. VIII and the Arkansas Constitution: (1) the warden had investigated the grievances that were filed against two corrections officers arising from their alleged mistreatment of prisoners, he had found that they were typical of grievances that were generally filed against corrections officers, and he had taken disciplinary action against the offending officer with regard to the one grievance that he found was substantiated; (2) the officers' employment records did not give the warden cause to believe that they presented a substantial risk to the safety of prisoners; and (3) the district court's disagreement with the warden's disciplinary choices, specifically the warden's failure to require the offending officer to participate in a remedial program in addition to the one-week suspension, temporary job reassignment, and reprimand that he received, was not sufficient to support the deliberate indifference finding. Lenz v. Wade, 490 F.3d 991 (8th Cir. 2007), cert. denied, 552 U.S. 998, 128 S. Ct. 504, 169 L. Ed. 2d 353 (2007).

Imposition of consecutive sentences was not in violation of defendant's due process rights or the Eighth Amendment to the U.S. Constitution where the trial judge noted that the sentences imposed on each count were less than the maximum and that the approach was consistent with other jury sentences in the country; the trial judge clearly exercised discretion in accepting the jury's recommendation. Ford v. State, 99 Ark. App. 119, 257 S.W.3d 560 (2007).

Defendant's sentence of two consecutive twenty-five year terms for two counts of delivery of a controlled substance in violation of § 5-64-401(a)(1)(A)(i) could not be changed on appeal because it was within the legislative limits, it did not result from passion or prejudice, it was not a clear abuse of the jury's discretion and it was not grossly disproportionate so as to shock the moral sense of the community. Although it was defendant's first conviction and the substance delivered weighed less than a gram, he had made multiple deliveries in public places, was later arrested for possessing methamphetamine and a handgun, and was convicted for two separate offenses within a one-week period. Benjamin v. State, 102 Ark. App. 309, 285 S.W.3d 264 (2008), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 561 (Oct. 23, 2008).

Victim Impact Statute.

Inmate who had been sentenced to death was incorrect in his argument that the victim impact procedure was inadequate in not requiring the jury to find proof beyond a reasonable doubt as to victim statements; the court also specifically rejected the notion that victim-impact evidence is an aggravating circumstance or that it violates the statutory weighing process set out in §§ 5-4-603 — 5-4-605. Johnson v. State, 356 Ark. 534, 157 S.W.3d 151 (2004), cert. denied, Johnson v. Arkansas, 543 U.S. 932, 125 S. Ct. 326, 160 L. Ed. 2d 235 (2004).

In a capital murder case, the state was properly allowed to present three witnesses who discussed the impact of the victims' deaths because § 5-4-602 did not declare what victim-impact evidence was relevant in any given case — that issue was decided by the circuit court, and victim-impact evidence was relevant to assist the jury in imposing punishment based on a measurement of the injury to society. Thomas v. State, 370 Ark. 70, 257 S.W.3d 92 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 397 (June 21, 2007), cert. denied, 552 U.S. 1025, 128 S. Ct. 620, 169 L. Ed. 2d 399 (2007).

Cited: Grayson v. Ross, 454 F.3d 802 (8th Cir. 2006).

§ 10. Right of accused enumerated — Change of venue.

RESEARCH REFERENCES

ALR. Denial of accused's request for initial contact with attorney — drunk driving cases. 109 A.L.R.5th 611.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues — Motions and objections during trial and matters other than pretrial motions. 117 A.L.R.5th 513.

Denial of accused's request for initial contact with attorney in cases involving offenses other than drunk driving — Cases focusing on presence of inculpatory statements. 124 A.L.R.5th 1.

Adoption and application of "tainted" approach or "dual motivation" analysis in determining whether existence of single discriminatory reason for peremptory strike results in automatic Batson violation when neutral reasons also have been articulated. 15 A.L.R.6th 319.

Comment Note: Construction and Application of Supreme Court's Ruling in Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177, 2004 U.S. LEXIS 1838, 63 Fed. R. Evid. Serv. 1077 (2004), with Respect to Confrontation Clause Challenges to Admissibility of Hearsay Statement by Declarant Whom Defendant Had No Opportunity to Cross-Examine. 30 A.L.R.6th 1.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Guilty Pleas — Probation, Parole, or Pardon Possibilities. 31 A.L.R.6th 49.

Determination of Request for Exclusion of Public from State Criminal Trial in Order to Preserve Safety, Confidentiality, or Well-Being of Witness Who Is Not Undercover Police Officer — Issues of Proof, Consideration of Alternatives, and Scope of Closure. 32 A.L.R.6th 171.

Basis for Exclusion of Public from State Criminal Trial in Order to Preserve Safety, Confidentiality, or Well-Being of Witness Who Is Not Undercover Police Officer. 33 A.L.R.6th 1.

Validity, Construction, and Application of Right of Defendant in State Criminal Proceeding to Jury Composed Solely of United States Citizens. 36 A.L.R.6th 189.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Entrapment Defense — State Cases. 43 A.L.R.6th 475.

Claims of Ineffective Assistance of Counsel in Death Penalty Proceedings — United States Supreme Court Cases. 31 A.L.R. Fed. 2d 1.

Construction and Application of Sixth Amendment Right to Counsel — Supreme Court Cases. 33 A.L.R. Fed. 2d 1.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Entrapment Defense — Federal Cases. 42 A.L.R. Fed. 2d 145.

Ark. L. Rev. Note, The Arkansas Rape-Shield Statute: Does It Create Another Victim?, 58 Ark. L. Rev. 949.

CASE NOTES

Analysis

Affirmative Defenses.

Defendant's due process rights were not violated by trial court's decision to refuse to allow the introduction of a mistake-of-age defense in a rape trial because the legislature had the authority to define crimes and defenses; moreover, there were exceptions to the rule that every crime

was required to contain a mens rea element. Gaines v. State, 354 Ark. 89, 118 S.W.3d 102 (2003).

Although defendant claimed that he was denied the ability to present evidence of the context in which the sexual abuse allegations were made and thus was unable to adduce significant evidence of the victim's true motive, defendant elicited testimony during the trial from the victim as to another possible motive for accusing defendant; thus, it was not that defendant was not allowed to present a defense, but rather that he was not allowed to present the defense he wanted due to the exclusion of the victim's prior sexual conduct, which was proper under § 16-42-101(b). Jackson v. State, 368 Ark. 610, 249 S.W.3d 127 (2007), cert. denied, Jackson v. State, 552 U.S. 850, 128 S. Ct. 112, 169 L. Ed. 2d 79 (2007).

Appellate Review.

Appellate counsel filed the notice of appeal four days after the judgment and, therefore, could have timely raised ineffective assistance of counsel in a motion for a new trial; defendant's argument, that the appellate court should have addressed claims of ineffective assistance first raised on direct appeal where it was apparent from the face of the record that an appellant received ineffective assistance of counsel and there was no possibility that the ineffectiveness was due to trial strategy was without merit. Ratchford v. State, 357 Ark. 27, 159 S.W.3d 304 (2004).

Defendant complained on appeal about an alleged conflict of interest involving his attorney, but the court's research had not revealed a single case where the court considered an ineffective assistance conflict of interest argument on direct appeal in the absence of a proper objection in the trial court; because defendant failed to raise his argument in the trial court, the court held that he failed to preserve this issue for review, and defendant himself had conceded that it could have been that the resolution of the matter was to occur in a proceeding under Ark. R. Crim. P. 37, as many of the relevant decisions on the point came in postconviction proceedings. Rackley v. State, 371 Ark. 438, 267 S.W.3d 578 (2007).

Closing Argument.

Criminal defendants, whether juvenile or adult, in a jury or bench trial, have a fundamental right to make a closing argument. S.S. v. State, 361 Ark. 42, 204 S.W.3d 512 (2005).

Impartial Jury.

Trial court did not err in denying defendant's Batson challenge to the state's exclusion of a juror who stated that she knew defendant's daughter and that a guilty verdict would be difficult for her; the state offered a race-neutral explanation of excluding the juror because of her ties with defendant's daughter. Travis v. State, 371 Ark. 621, 269 S.W.3d 341 (2007).

State excluded a juror because the juror's son had recently been a defendant in a murder trial and the juror believed that her son was not guilty; the trial court found that this explanation was race-neutral and the court agreed and did not disturb the ruling. Travis v. State, 371 Ark. 621, 269 S.W.3d 341 (2007).

Based on the fact that a juror and a reverend worshipped together and the reverend was one of defendant's witnesses, the trial court upheld the state's strike of the juror and the court affirmed. Travis v. State, 371 Ark. 621, 269 S.W.3d 341 (2007).

State excused a juror because the juror worshipped with a reverend who was a witness for defendant, plus the state worried that the juror would have given the reverend more credibility because of the close ties that he had to the juror's mother; the trial court found this to be a sufficient race-neutral explanation and the court agreed. Travis v. State, 371 Ark. 621, 269 S.W.3d 341 (2007).

—Peremptory Challenges.

Trial court did not abuse its discretion in upholding strikes of two African-American jurors as the explanations given by the state for the strikes appeared to be race-neutral reasons and, after the reasons were given, no additional evidence or argument was presented by defense counsel in support of his claim of purposeful discrimination. Stenhouse v. State, 362 Ark. 480, 209 S.W.3d 352 (2005).

Although defendant was entitled to eight peremptory challenges under § 16-33-305(b) and the trial court erred by not requiring the state to prove purposeful discrimination after defendant gave race-neutral reasons for the strikes, defen-

dant's conviction was affirmed due to his failure to mount proper arguments on appeal. Childs v. State, 95 Ark. App. 343, 237 S.W.3d 116 (2006).

Personal Presence.

Defendant was not entitled to a new trial where the trial court formulated and delivered written answers to the jury's questions in his absence because there was no objection by defendant or his counsel, who was present in the judge's chambers and approved the judge's written answers to the jury; an objection must be made by counsel in order to preserve for appellate review the claim that defendant was absent during a critical stage of the proceedings. Clark v. State, 94 Ark. App. 5, 223 S.W.3d 66 (2006).

Privileged Matters.

Where prosecutor issued a subpoena to an accident reconstructionist hired by attorney who represented a driver involved in a car accident, the court ruled that the accident reconstruction report and testimony of the accident reconstructionist's employee were confidential and privileged communications that could not be subpoenaed. Holt v. McCastlain, 357 Ark. 455, 182 S.W.3d 112 (2004).

Right to Counsel.

Where defendant was denied post-conviction relief after he was convicted as a principal and his co-defendant was convicted as an accomplice, defendant was not prejudiced by the joint representation because both were charged as principals and accomplices, and 3 of the 5 counts in the information pertained solely to defendant. Cook v. State, 361 Ark. 91, 204 S.W.3d 532 (2005).

Defendant's right to counsel under Ark. Const. art. 2, § 10 and the Sixth Amendment was violated because he did not make a knowing and intelligent waiver of counsel where trial court failed to make an inquiry as to his understanding of the legal process and did not specifically warn him of the substantive risks of proceeding without counsel; also, defendant did not get substantial assistance from his standby counsel. Parker v. State, 93 Ark. App. 472, 220 S.W.3d 238 (2005).

Trial court did not err by refusing to suppress defendant's statement to jailer as defendant clearly initiated communication with the police and waived her right to counsel. Vidos v. State, 367 Ark. 296, 239 S.W.3d 467 (2006).

After defendant's probation was revoked, trial counsel was not ineffective for failing to object to the trial court's determination that defendant had to serve 70 percent of his sentence before parole eligibility because under § 16-93-611(a)(1) a person convicted of possessing drug paraphernalia with the intent to manufacture methamphetamine and sentenced to imprisonment could not be eligible for parole until serving 70 percent of any sentence received. Cox v. State, 365 Ark. 358, 229 S.W.3d 883 (2006).

Circuit court clearly erred in denying defendant's motion for postconviction relief, because the petition provided specific facts to establish actual prejudice due to counsel's conduct at trial and the allegations were not conclusory, when counsel's performance was deficient by failing to suppress defendant's custodial statement as a violation of the Sixth Amendment right to counsel, and the deficient performance prejudiced the defense since the inclusion of defendant's statement as the state's evidence at trial and used in affirming the conviction was sufficient to find that there was a reasonable probability that the decision reached would have been different absent counsel's failure to suppress the statement; the conviction resulted from a breakdown in the adversarial process that rendered the result unreliable. Sparkman v. State, 373 Ark. 45, 281 S.W.3d 277 (2008).

Because defendant did not state facts to demonstrate that either prong of the Strickland test was met, and because evidentiary issues did not present a claim that was cognizable in an Ark. R. Crim. P. 37.1 petition, defendant's petition for postconviction relief was properly denied. Stivers v. State, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 16 (Jan. 22, 2009).

Denial of appellant's, and inmate's, petition for postconviction relief was appropriate because she failed to prove that her counsel was ineffective since, to the extent that her argument concerned counsel's failure to call witnesses other than herself, the inmate failed to demonstrate that her defense was prejudiced. Additionally, prejudice could not be presumed regarding the inmate's sentence since she received a sentence that was less than the maximum allowed for that crime. McGa-

hey v. State, 2009 Ark. 80, — S.W.3d — (2009).

Order denying an inmate's motion for postconviction relief under Ark. R. Crim. P. 37 was affirmed because defense counsel's decision not to call a certain shaky witness who had a criminal history went to counsel's trial strategy and was not an omission resulting in ineffective assistance of counsel. Gaye v. State, 2009 Ark. 201, 307 S.W.3d 1 (2009).

Order granting an inmate's petition for postconviction relief in accordance with Ark. R. Crim. P. 37 based on ineffective assistance of counsel was reversed because circuit court failed to inquire if the disclosure of a calendar ahead of trial would have changed the evidence before the jury in such a manner as to create a reasonable probability of an acquittal. State v. Brown, 2009 Ark. 202, 307 S.W.3d 587 (2009).

Based on evidence seized from appellant's car following a traffic stop, he was convicted of possession of cocaine, simultaneous possession of drugs and firearms, and possession of a firearm by a felon; counsel was not ineffective for failing to move to suppress the evidence on the basis that appellant had not been tried on charges of speeding and driving on a suspended license. Whether a police officer has probable cause to make a traffic stop does not depend on whether the driver was actually guilty of the violation which the officer believed to have occurred. White v. State, 2009 Ark. 225, — S.W.3d — (2009).

Denial of an inmate's petition for postconviction was affirmed because the inmate did not show a conflict of interest that actually affected his attorneys' performance and he failed to show that any conflict between his attorneys and him had an actual, detrimental effect on their representation of him. Lee v. State, 2009 Ark. 255, 308 S.W.3d 596 (2009), cert. denied, Lee v. Arkansas, — U.S. —, 130 S. Ct. 555, 175 L. Ed. 2d 386 (2009).

Defendant's petition for postconviction relief was properly denied under Ark. R. Crim. P. 37.1 where defendant could not prove that his counsel was ineffective in failing to investigate witnesses and the accomplice testimony was sufficiently corroborated; a copy of the record would not have been beneficial concerning the issues in question. Woody v. State, 2009 Ark. 413, — S.W.3d — (2009).

Counsel was not ineffective for failing to make an argument that was meritless; because defendant did not state a meritorious basis upon which counsel could have objected to the seating of the juror and the record clearly supported the juror's selection, defendant's claim as to ineffective assistance on that basis failed, and the supreme court would not label counsel ineffective merely because of possible bad tactics or strategy in selecting a jury. Anderson v. State, 2009 Ark. 493, — S.W.3d — (2009).

None of defendant's statements unambiguously and unequivocally indicated defendant's right to remain silent or a right to counsel; defendant was conscious of his Miranda rights and he continued to talk to the officer and answer his questions even though he knew it was against his best interest, and there was no error in allowing the indicated portions of the custodial statement. Sykes v. State, 2009 Ark. 522, — S.W.3d — (2009).

When a jury found appellant guilty of manufacturing methamphetamine, possessing drug paraphernalia with intent to manufacture methamphetamine, and fleeing. he was not entitled to postconviction relief under Ark. R. Crim. P. 37.1 based on his ineffective assistance of counsel claim. The Supreme Court of Arkansas held that counsel was not ineffective for failing to introduce a letter to show that appellant's girlfriend was a "meth cook;" counsel's did not commit fraud in hiring an investigator; counsel's failure to call the investigator to testify was a matter of trial tactics; and appellant was not prejudiced by counsel's failure to call additional witnesses. Britt v. State, 2009 Ark. 569, — S.W.3d — (2009).

When someone driving appellant's car fled from an officer and ran into the woods, items used to manufacture methamphetamine were found in the car and appellant's girlfriend testified that he was driving; a jury found appellant guilty of manufacturing methamphetamine, possessing drug paraphernalia with intent to manufacture methamphetamine, and fleeing. He was not entitled to postconviction relief under Ark. R. Crim. P. 37.1 based on counsel's failure to object to evidence that appellant and his girlfriend had been convicted of other crimes related

to methamphetamine; the evidence was admissible under Ark. R. Evid. 404(b), as it was independently relevant to the issue of the identity of the driver and his relationship to the passenger. Britt v. State, 2009 Ark. 569, — S.W.3d — (2009).

Trial counsel was not ineffective for failure to object to the charges pending against appellant for the manufacture of methamphetamine and possession of drug paraphernalia with intent to manufacture methamphetamine on the basis that the charges were a violation of the prohibition against double jeopardy. The Supreme Court of Arkansas has held that possession of drug paraphernalia with intent to manufacture methamphetamine is not a lesser-included offense of manufacture of methamphetamine; therefore, appellant was not entitled to postconviction relief. Britt v. State, 2009 Ark. 569, — S.W.3d — (2009).

Trial court properly denied defendant's request for a continuance to hire new counsel where defendant did not proffer any testimony from which the appellate court could evaluate the relevance, let alone the prejudicial effect, of its denial of the continuance to allow him the opportunity to obtain his own expert testimony; defendant did not demonstrate that the expert testimony he wanted would have resulted in a different conclusion by the jury. Price v. State, 2009 Ark. App. 664, — S.W.3d — (2009).

Defendant's convictions for aggravated robbery, first-degree terroristic threatening, theft of property, and third-degree battery were proper because he was made aware of the dangers and disadvantages of self-representation and chose to represent himself with eyes wide open. In part, defendant was advised that he would be held to the same restrictions and obligations as a lawyer and that he would be subject to the rules of evidence; he was also informed of the seriousness of the charges and possibility of a life sentence. Williams v. State, 2009 Ark. App. 684, — S.W.3d — (2009), review or rehearing denied, 2009 Ark. 589, — S.W.3d — (2009).

Denial of the inmate's petition for postconviction relief was appropriate because, to have shown prejudice and proven that she was deprived of a fair trial due to ineffective assistance of counsel, the inmate, who had pled guilty, was required to demonstrate a reasonable probability that, but for counsel's errors, she would not have so pleaded and would have insisted on going to trial. It would have defied all logic for her to have asserted that she would not have entered a plea for the agreed-upon sentence if trial counsel had presented mitigating evidence, as any presentation of mitigating evidence would have occurred subsequent to the inmate entering the guilty plea, which she admitted was entered knowingly and intelligently. Jamett v. State, 2010 Ark. 28, — S.W.3d — (2010).

Trial counsel was not ineffective in failing to preserve the issue of sufficiency of the evidence by moving for a directed verdict because counsel "gave up nothing" by failing to move for a directed verdict; the victim's testimony established the elements of the rape charge, and that testimony alone was sufficient to support the verdict. Bell v. State, 2010 Ark. 65, — S.W.3d — (2010).

Trial counsel was not ineffective for failing to investigate the case, securing DNA evidence testing, and obtaining expert medical testimony because a postconviction relief appellant did not establish any facts to support a conclusion that there was any evidence that could have been subjected to scientific testing and that would have been admissible, and since the victim did not immediately report the incident, any samples that could be later obtained through a medical exam or further investigation would not have been relevant to the rape charge; the testimony at trial established that the victim did not tell her mother or anyone else about the rape until a number of weeks after the incident, that her mother had washed and then disposed of the bloody panties that the victim had worn, that the victim was given a medical examination after she reported the incident, and that no samples were taken from the mattress upon which the incident occurred. Bell v. State, 2010 Ark. 65, — S.W.3d — (2010).

Trial counsel was not ineffective for failing to invoke the rape shield statute, § 16-42-101, or for failing to argue that the victim had said someone else had raped her or investigate those statements because if counsel had exculpatory evidence to present, the only proper means to seek admission was through a request for a hearing, and even if counsel erred in

failing to request such a hearing, the postconviction relief appellant did not establish that, had counsel requested a hearing, his arguments for admission of the evidence would have been effective; there was no basis to support a claim that the evidence was needed to rebut the inference that the child victim received her knowledge of sexual matters from alleged encounters with appellant, and appellant did not establish that there was potentially relevant evidence to be discovered, or that counsel could have sought to admit, that was suitably compelling so as to overcome its highly prejudicial nature through strong probative value, as § 16-42-101(c) required. Bell v. State, 2010 Ark. 65, — S.W.3d — (2010).

Trial counsel was not ineffective for discussing the case with the prosecution because appellant did not, in his petition for postconviction relief or during the hearing on the petition, point to any specific incidents in which counsel had inappropriate communication with the prosecution, that demonstrated how he was mislead by counsel, or that would show counsel participated in a conspiracy to convict appellant Bell v. State, 2010 Ark. 65, — S.W.3d — (2010).

Trial court did not err in denying appellant's petition under Ark. R. Crim. P. 37.1 because appellant failed to set forth facts sufficient to sustain a finding that any alleged ineffective assistance of trial counsel resulted in prejudice since appellant could not show prejudice from any alleged error by trial counsel concerning a failure to impeach or discredit a statement of the victim's daughter; the admission of the statement was not prejudicial, and a failure to impeach the statement was not prejudicial because the evidence at trial, aside from the daughter's statement, was overwhelming. Rodriguez v. State, 2010 Ark. 78, — S.W.3d — (2010).

Dismissal of appellant's, an inmate's, appeal from the denial of his petition for postconviction relief was proper because he failed to prove that he received the ineffective assistance of counsel; counsel testified, and the record confirmed, that he did question a police officer concerning a relationship with a witness and the inmate did not introduce any evidence or information of such a relationship that counsel might have found from further investigation or that counsel could have used to impeach the officer's testimony. Further, challenges to a witness's credibility were not cognizable claims in proceedings under Ark. R. Crim. P. 37.1 and allegations that trial counsel did not communicate with the inmate or investigate the case and was unprepared for trial were likewise deficient in factual substantiation. Dunlap v. State, 2010 Ark. 111, — S.W.3d — (2010).

Trial court did not err in denying a prison's petition for postconviction relief because the prisoner did not set forth facts sufficient to state a cognizable claim; the prisoner's claims of ineffective assistance of counsel concerning procedural defects in the plea proceedings, failure to comply with Ark. R. Crim. P. 24, and trial counsel's failure to seek suppression of evidence or raise a defense were conclusory, and his other allegations of error, those concerning the negotiation procedures, counsel's inaction in raising issues in the negotiations, and counsel's failure to request jury sentencing, would not have had any impact on appellant's ultimate decision to accept the plea offer that he received. Shaw v. State, 2010 Ark. 112, — S.W.3d — (2010).

In a civil guardianship and conservatorship action, the trial court did not abuse its discretion or violate a ward's right to counsel of the ward's own choosing by appointing an attorney ad litem, who was wholly independent of those competing for the ward's care and custody, where the ward's original attorney also represented a brother, who was seeking appointment as the ward's guardian. Kuelbs v. Hill, 2010 Ark. App. 427, — S.W.3d — (2010).

Court erred in finding defendant waived the right to counsel; the waiver was equivocal because he stated he would only represent himself if he could not have another attorney, and it was not knowing and intelligent because the court made only minimal inquiries of his education but did not discuss the risks of proceeding without counsel. Robinson v. State, 2010 Ark. App. 430, — S.W.3d — (2010).

Denial of defendant's motion for a new trial after he had been convicted of rape was appropriate because statements commenting on the lack of evidence were clearly directed towards rebutting the defensive strategy and did not constitute impermissible references to defendant's failure to testify. Because the remarks

were not improper, counsel was not ineffective for failing to preserve an argument that those remarks were improper. Rounsaville v. State, 2011 Ark. 236, — S.W.3d — (2011).

—Appeal.

Defendant failed to cite any authority for his argument that, even if the appellate court found no Sixth Amendment violation for denial of counsel on appeal, there was still an Arkansas constitutional violation; although defendant pointed out that the Arkansas Constitution had different language than the Sixth Amendment, he failed to explain how this difference in language afforded him more protection. McClina v. State, 354 Ark. 384, 123 S.W.3d 883 (2003).

—Conduct of Trial by Accused.

Trial court did not err in denying post-conviction relief where defendant failed to show that he was prejudiced when a pardoned sentence was introduced during the sentencing phase of his trial because, once the state offered the certified copy of the conviction, it had established a prima facie case and the burden shifted to defendant to establish the pardon; because no such evidence was introduced, the conviction was properly admitted. Cook v. State, 361 Ark. 91, 204 S.W.3d 532 (2005).

Trial court did not err in denying post-conviction relief where defendant claimed his counsel was ineffective for failing to impeach an informant regarding alleged inconsistent statements by using tape recorded conversations because there was no evidence that the jury would have resolved the credibility determination in defendant's favor such that it would have affected the outcome of his trial. Cook v. State, 361 Ark. 91, 204 S.W.3d 532 (2005).

—Post-Conviction Proceedings.

Where defendant was convicted of engaging children in sexually explicit conduct for use in visual or print medium, counsel was not ineffective for failing to make an argument that defendant was not producing materials for "pecuniary profit" as that was no longer a required element of the charge against defendant. Smith v. State, 367 Ark. 611, 242 S.W.3d 253 (2006), rehearing denied, — Ark. —, — S.W.3d —, 2006 Ark. LEXIS 629 (Dec. 14, 2006).

—Presence of Counsel.

In a driving while intoxicated (DWI) seventh offense case, although many procedural errors occurred in three of defendant's prior DWI cases, the trial court did not err in denying defendant's motion to strike the prior convictions as none of the errors rose to the level of a jurisdictional defect resulting from the failure to appoint counsel; defendant was represented by counsel in two of the prior cases and signed a waiver-of-counsel form in the third case. Camp v. State, 364 Ark. 459, 221 S.W.3d 365 (2006).

—Waiver.

Trial court did not err in denying defendant's motion to supress certain statements she made during questioning regarding her missing child; although defendant claimed that she had done the best she could to convey to the officer that she was concerned about continuing to talk to him without a lawyer present, when the officer asked defendant whether she was asking for a lawyer, she did not answer that question but, rather, continued answering other questions and did not mention a lawyer again during the interview. Gilbert v. State, 88 Ark. App. 296, 198 S.W.3d 561 (2004).

Defendant's convictions for felony theft of property and breaking and entering were improper where the trial court erred in forcing defendant to be represented by counsel and in refusing to allow him to appear pro se; while the trial court might have had good intentions to protect him from his ignorance, it failed to apprise him of the dangers of self-representation, and the failure to do so constituted reversible error. Pierce v. State, 362 Ark. 491, 209 S.W.3d 364 (2005).

Right to Testify.

Trial court did not abuse its discretion and defendant's constitutional right to testify was not violated where he clearly and on the record stated his intention not to testify in response to a direct question put to him by the trial court at the close of the evidence; defendant requested that he be able to testify only after counsel had conferred in chambers to prepare jury instructions. Henson v. State, 94 Ark. App. 163, 227 S.W.3d 450 (2006).

Right to Trial by Jury.

Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000),

does not compel the reversal of Ferguson v. State, 362 Ark. 547, 210 S.W.3d 53 (2003), because whether a prior felony was violent in nature is a matter of law for the trial court; moreover, the jury did not have to determine the fact of a prior conviction. Austin v. State, 98 Ark. App. 380, 255 S.W.3d 888 (2007).

Trial court's standard practice of requiring a defendant to request a jury at least 48 hours before trial was not in accordance with the Arkansas Constitution or the Arkansas Rules of Criminal Procedure; the notice requirement put a defendant in the position of forfeiting his or her right to a jury trial due to inaction. Swindle v. State, 373 Ark. 519, 285 S.W.3d 200 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 456 (Sept. 18, 2008), cert. denied, Swindle v. Arkansas, — U.S. —, 129 S. Ct. 1616, 173 L. Ed. 2d 994 (2009).

Speedy Trial.

Defendant's speedy-trial argument was not preserved for review because defendant and his counsel were present and failed to make a contemporaneous objection at the numerous hearings in which time was excluded for speedy trial purposes due to defendant's incomplete mental evaluation. Deasis v. State, 360 Ark. 286, 200 S.W.3d 911 (Jan. 13, 2005).

Because defendant's trial did not occur until 639 days after defendant was arrested, defendant made a prima facie case that his right to a speedy trial was violated, but because only 146 days were chargeable to the state, the trial court did not err in denying defendant's motion to dismiss for lack of speedy trial; defendant's attorney filed a motion for continuance, stating that the speedy trial requirement was waived, and defendant was bound by the acts of his attorney. Block v. State, 2010 Ark. App. 603, — S.W.3d — (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 474 (Oct. 7, 2010).

Venue.

—Change.

Affidavits from members of the petit jury stating that defendant could not receive a fair trial due to pretrial publicity were not enough to show that the trial court abused its discretion in denying defendant's motion for change of venue; the trial court took extensive precautions to ensure defendant a fair trial, all jurors who were possibly tainted with pretrial publicity were dismissed, and defendant voiced his approval of each juror selected. Porter v. State, 359 Ark. 323, 197 S.W.3d 445 (2004).

Witnesses.

In a second-degree murder case under § 5-10-103, defendant's rights under the federal and state Confrontation Clauses were violated by the admission of an incriminating testimonial statement made by defendant's sister relating to his motive and state of mind; although the sister was unavailable, defendant did not have an opportunity for cross-examination. Moreover, the statement was not offered for a non-hearsay purpose, and the admission of such was not harmless. Seaton v. State, 101 Ark. App. 201, 272 S.W.3d 854 (2008).

Rape shield statute, § 16-42-101(b), did not violate defendant's right to compulsory process during defendant's trial for rape of a minor because defendant was able to cross-examine a physician, who testified that the injury to the victim's vaginal area was not a fresh injury, but occurred sometime in the past. Defendant was also able to cross-examine the victim about her allegations. Joyner v. State, 2009 Ark. 168, 303 S.W.3d 54 (2009), cert. denied, Joyner v. Arkansas, — U.S. —, 130 S. Ct. 736, 175 L. Ed. 2d 514 (2009).

In a trial for two counts of rape involving defendant's six-year-old and four-year-old children, defendant's right to confront witnesses was not violated; although defendant may not have made eye contact with a child witness, defendant was situated in the courtroom where defendant could view the witness and hear the witness testify. Tarkington v. State, 2010 Ark. App. 548, — S.W.3d — (2010).

Defendant's right to confrontation was violated by the admission of a witness's statements through the testimony of an investigating officer; the trial court did not question the state's explanation that the witness was unavailable, nor did it make a finding that the officer's testimony had some indicia of reliability. Cannon v. State, 2010 Ark. App. 698, — S.W.3d — (2010).

Trial court complied with the standards regarding certification for foreign lan-

guage interpreters in Arkansas courts in §§ 16-89-104(a) and 16-10-127 as the standards established by the Arkansas courts expressly permitted a non-certified interpreter upon a finding that diligent and good faith efforts to obtain a certified interpreter were made and none had been found to be reasonably available. Diligent efforts were made to obtain a certified interpreter, and although the trial court was advised that there were no certification programs for the Kiti language, defendant was able to obtain the services of the interpreter at issue, who was certified and had experience as a Marshallese interpreter and also spoke Kiti. Ludrick v. State, 2011 Ark. App. 54, — S.W.3d — (2011), rehearing denied, — Ark. App. —, — S.W.3d —, 2011 Ark. App. LEXIS 170 (Mar. 2, 2011).

—Attendance.

Where defendant sought to have the trial judge recuse, it was clear that defendant was simply hoping that the subpoenaed witnesses would provide helpful testimony, but this fell short of the required showing that the testimony would have been "both material and favorable to defendant's case"; therefore, defendant showed no prejudice from the trial court's decision not to order the witnesses' appearance and testimony. Holder v. State, 354 Ark. 364, 124 S.W.3d 439 (2003).

—Confrontation.

In defendant's capital murder case, defendant's confrontation rights were not violated where the trial court admitted the DNA results and allowed an expert to testify because defendant failed to expose any actual tampering, planting of evidence, or significant gap in the chain of custody and the record did not reflect that any of those issues occurred. Green v. State, 365 Ark. 478, 231 S.W.3d 638 (2006).

Cited: Greene v. State, 356 Ark. 59, 146 S.W.3d 871 (2004).

§ 11. Habeas corpus.

CASE NOTES

Appeal.

Where petitioner raised a valid claim of an illegal suspended sentence for delivery of a controlled substance, for which the circuit court entered a judgment of revocation years later and then imposed the suspended sentence, the circuit court's order denying petitioner's request for a writ of habeas corpus was reversed since detention for an illegal period of time was precisely what a writ of habeas corpus was designed to correct. Taylor v. State, 354 Ark. 450, 125 S.W.3d 174 (2003).

§ 13. Redress of wrongs.

RESEARCH REFERENCES

ALR. Validity and Application of Anticipatory Search Warrant — Federal Cases. 31 A.L.R. Fed. 2d 123.

Ark. L. Rev. Recent Development: Worker's Compensation, 58 Ark. L. Rev. 753.

The New Judicial Federalism Takes Root in Arkansas, 58 Ark. L. Rev. 883.

CASE NOTES

Analysis

Medical Injuries.
Right to Trial.
Workers' Compensation.

Medical Injuries.

Statute of limitations in the Medical Malpractice Act, § 16-114-201 et seq., has a rational basis and it does not deprive a claimant of a constitutional right to a redress of wrongs or a jury trial, nor does it violate the right to equal protection. Davis v. Parham, 362 Ark. 352, 208 S.W.3d 162 (2005).

Medical Malpractice Act, § 16-114-201 et seq., in its entirety passes the rational-basis test; there is a clear rational relationship between the burden of proof re-

quired and the achievement of the legitimate governmental objective of reducing healthcare costs. Davis v. Parham, 362 Ark. 352, 208 S.W.3d 162 (2005).

Claimant was not denied a remedy for her injuries in violation of Ark. Const. art. II, § 13, because, although the charitable-immunity doctrine barred recover against the hospital, a charitable facility, the claimant was free to bring suit against the hospital employees. Sowders v. St. Joseph's Mercy Health Ctr., 368 Ark. 466, 247 S.W.3d 514 (2007), superseded by statute as stated in, Archer v. Sisters of Mercy Health Sys., 375 Ark. 523, 294 S.W.3d 414 (2009).

Right to Trial.

Supreme Court could not give Arkansas Workers' Compensation Commission preclusive effect that would deprive the employee of a full and fair opportunity to litigate the issue as Ark. Const. art. 2, § 7 made clear that the right of a jury trial in all cases at law was inviolate unless it was waived by the litigant; due to the constitutional nature of this right, along with the right to redress of wrongs found in this section, that made it necessary to amend the constitution before the legislature could establish workers' compensation laws, as those laws effectively stripped employees of those rights in claims against their employers. Craven v. Fulton Sanitation Serv., 361 Ark. 390, 206 S.W.3d 842 (2005).

Workers' Compensation.

Denial of employer's writ of prohibition after the circuit court refused to dismiss employee's negligence claim against employer was proper pursuant to this section because a worker whose injury was not covered by the Workers' Compensation Act, § 11-9-101 et seq., was not precluded from filing a claim in tort against his employer. Automated Conveyor Sys. v. Hill, 362 Ark. 215, 208 S.W.3d 136 (2005).

§ 15. Unreasonable searches and seizures.

RESEARCH REFERENCES

ALR. When are facts offered in support of search warrant for evidence of sale or possession of cocaine so untimely as to be stale — State cases. 109 A.L.R.5th 99.

When are facts offered in support of search warrant for evidence of sexual offense so untimely as to be stale — State cases. 111 A.L.R.5th 239.

When are facts relating to marijuana, provided by one other than police or other law enforcement officer, so untimely as to be stale when offered in support of search warrant for evidence of sale or possession of a controlled substance — State cases. 112 A.L.R.5th 429.

When are facts relating to drug other than cocaine or marijuana so untimely as to be stale when offered in support of search warrant for evidence of sale or possession of controlled substance — State cases. 113 A.L.R.5th 517.

Validity of warrantless search of motor vehicle based on odor of marijuana — State cases. 114 A.L.R.5th 173.

When are facts relating to marijuana, provided by police or other law enforcement officer, so untimely as to be stale when offered in support of search warrant for evidence of sale or possession of controlled substance — State cases. 114 A.L.R.5th 235.

Validity of warrantless search based in whole or in part on odor of narcotics other than marijuana, or chemical related to manufacture of such narcotics. 115 A.L.R.5th 477.

Validity of routine roadblocks by state or local police for purpose of discovery of driver's license, registration, and safety violations. 116 A.L.R.5th 479.

Use of trained dog to detect narcotics or drugs as unreasonable search in violation of state constitutions. 117 A.L.R.5th 407.

Adequacy of defense counsel's representation of criminal client regarding search and seizure issues — Motions and objections during trial and matters other than pretrial motions. 117 A.L.R.5th 513.

Validity of warrantless search of other than motor vehicle or occupant of vehicle based on odor of marijuana — State cases. 122 A.L.R.5th 337.

Validity of warrantless search of motor vehicle driver based on odor of marijuana — State cases. 123 A.L.R.5th 179.

Validity of search conducted pursuant to

parole warrant. 123 A.L.R.5th 221.

Validity of warrantless search of motor vehicle passenger based on odor of marijuana. 1 A.L.R.6th 371.

Application of Leon good faith exception to exclusionary rule where police fail to comply with knock and announce requirement during execution of search warrant. 2 A.L.R.6th 169.

Application in state narcotics cases of collective knowledge doctrine or fellow officers' rule under Fourth Amendment-Cocaine cases. 4 A.L.R.6th 599.

Application in state narcotics cases of collective knowledge doctrine or fellow officers' rule under Fourth Amendment-Drugs other than marijuana and cocaine and unidentified drugs. 12 A.L.R.6th 553.

Construction and application of rule permitting knock and talk visits under Fourth Amendment and state constitutions. 15 A.L.R.6th 515.

When is warrantless entry of house or other building justified under "hot pursuit" doctrine. 17 A.L.R.6th 327.

Hospital as Within Constitutional Provision Forbidding Unreasonable Searches and Seizures. 28 A.L.R.6th 245.

Application in State Narcotics Cases of Collective Knowledge Doctrine or Fellow Officers' Rule Under Fourth Amendment--Marijuana Cases. 35 A.L.R.6th 497.

Validity of Search of Cruise Ship Cabin. 43 A.L.R.6th 355.

Validity of Search and Reasonable Expectation of Privacy as Affected by No Trespassing or Similar Signage. 45 A.L.R.6th 643.

Construction and Application of "Automatic Companion Rule" or Person's "Mere Propinquity" to Arrestee to Determine Propriety of Search of Person for Weapons or Firearms. 47 A.L.R.6th 423.

Construction and Application of Consent-Once-Removed Doctrine, Permitting Warrantless Entry Into Residence by Law Enforcement Officers for Purposes of Effectuating Arrest or Search Where Confidential Informant or Undercover Officer Enters with Consent and Observes Criminal Activity or Contraband in Plain View. 50 A.L.R.6th 1.

Sufficiency of Showing to Support No-Knock Search Warrant — Cases Decided After *Richards v. Wisconsin,* 520 U.S. 385, 117 S. Ct. 1416, 137 L. Ed. 2d 615, 1997 U.S. LEXIS 2794 (1997). 50 A.L.R.6th 455.

Construction and Application of Supreme Court's Holding in Arizona v. Gant, 129 S. Ct. 1710, 173 L. Ed. 2d 485, 47 A.L.R. Fed. 2d 657 (2009), That Police May Search Vehicle Incident to Recent Occupant's Arrest Only if Arrestee is Within Reaching Distance of Passenger Compartment at Time of Search or it is Reasonable to Believe Vehicle Contains Evidence of Offense — Substantive Traffic Offenses. 55 A.L.R.6th 1.

When Are Facts Offered in Support of Search Warrant for Evidence of Federal Drug Offense So Untimely As To Be Stale. 13 A.L.R. Fed. 2d 1.

Allowable Use of Federal Pen Register and Trap and Trace Device to Trace Cell Phones and Internet Use. 15 A.L.R. Fed. 2d 537.

Unconstitutional Search or Seizure as Warranting Suppression of Evidence in Removal Proceeding. 40 A.L.R. Fed. 2d 489.

Border Search or Seizure of Traveler's Laptop Computer, or Other Personal Electronic or Digital Storage Device. 45 A.L.R. Fed. 2d 1.

Ark. L. Notes. Adelman, Towards an Independent State Constitutional Jurisprudence II — Arkansas Supreme Court rules state constitution requires warning prior to "Knock and Talk" searches, 2004 Arkansas L. Notes 1.

Ark. L. Rev. Casenote, Hoay v. State: A Look at the United States Supreme Court's and Arkansas's Misapplication of the Exclusionary Rule and Good Faith Exception, 57 Ark. L. Rev. 993.

The New Judicial Federalism Takes Root in Arkansas, 58 Ark. L. Rev. 883.

U. Ark. Little Rock. L. Rev. Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 U. Ark. Little Rock L. Rev. 681.

Comment, Arkansas's Entry into the Not-So-New Judicial Federalism, 25 U. Ark. Little Rock L. Rev. 835.

Annual Survey of Case Law, Criminal Law, 28 U. Ark. Little Rock L. Rev. 703.

CASE NOTES

Analysis

In General.

Where the sheriff, relying upon a mandate from the court, executed an Order of Immediate Possession on defendant and was of the understanding that he had complied with § 18-60-310, based on the totality of the circumstance, suppressing the evidence would not serve the remedial purposes of the exclusionary rule. Deshazo v. State, 95 Ark. App. 398, 237 S.W.3d 493 (2006).

Construction.

Although the search and seizure language of Ark. Const. Art. 2, § 15 is very similar to the words of the Fourth Amendment, Arkansas courts are not bound by the federal interpretation of the Fourth Amendment when interpreting Arkansas law. State v. Brown, 356 Ark. 460, 156 S.W.3d 722 (2004).

Term "unreasonable search," as employed in this section, is to be interpreted in the same manner as the United States Supreme Court interprets the Fourth Amendment. McDonald v. State, 92 Ark. App. 1, 210 S.W.3d 915 (2005).

Canine Sniff.

Argument that a canine sniff constituted a search under this section was not addressed because it had not been sufficiently developed. State v. Harris, 372 Ark. 492, 277 S.W.3d 568 (2008).

Circuit court erred in concluding that a positive alert from a canine sniff standing alone did not constitute probable cause to subsequently search a vehicle, given testimony from the dog's handler as to his training and reliability. Therefore, seizure of evidence from the car did not violate U.S. Const. Amend. IV. State v. Thompson, 2010 Ark. 294, — S.W.3d — (2010).

DNA Collection.

Supreme Court of Arkansas adopted the totality of the circumstances test and determined that the DNA collection statute did not constitute an unreasonable search and seizure as a convicted felon has a diminished expectation of privacy in the penal context, a blood test does not constitute an unduly extensive imposition on an individual's privacy and bodily integrity, and the state's interest in solving crimes is substantial. Polston v. State, 360 Ark. 317, 201 S.W.3d 406 (2005).

Investigatory Stop.

Defendant's motion to suppress evidence was properly denied in a drug case because an officer had authority to continue a detention under Ark. R. Crim. P. 3.1; there was reasonable suspicion under Ark. R. Crim. P. 2.1 based on defendant's nervousness, his unusual travel plans, and the strong smell of fabric softener in his car. Ayala v. State, 90 Ark. App. 13, 203 S.W.3d 659 (2005).

Trial court did not err in denying defendant's motion to suppress statements she made to police during their investigation of her landlord's death where the officers made it reasonably clear to defendant that she was not legally obligated to furnish information or otherwise cooperate; the officers made it clear that she could go to the sheriff's office at her own convenience. Wilson v. State, 364 Ark. 550, 222 S.W.3d 171 (2006).

Defendant's motion to suppress evidence was properly denied as defendant's argument regarding the applicable standards for an investigatory stop under Ark. Const. art. 2, § 15 and Ark. R. Crim. P. 3.4 did not address an officer's version of what occurred; on appeal, all evidence is re-

viewed under the totality of the circumstances, however, considerable weight is given to the version of the facts that support the trial judge's findings and as defendant's argument fails to address the officer's account of what transpired, his argument fails to mesh with the operant facts of this case. Meeks v. State, — Ark. App. —, — S.W.3d —, 2006 Ark. App. LEXIS 779 (Nov. 29, 2006).

Motion to suppress evidence was improperly granted because, where police had known an informant to give reliable information in the past, and accurate information was received from the informant about defendant and his vehicle, officers had specific, particularized, and articulable reasons for thinking that defendant was involved in criminal activity, which justified a stop under Ark. R. Crim. P. 3.1. Because the officers had reasonable suspicion to stop and detain the vehicle, any pretext on the part of the officers was irrelevant; moreover, the officers did not need any additional reasonable suspicion to justify a canine sniff, which was not a search under the Fourth Amendment. State v. Harris, 372 Ark. 492, 277 S.W.3d 568 (2008).

Based on evidence seized from appellant's car following a traffic stop, he was convicted of possession of cocaine, simultaneous possession of drugs and firearms, and possession of a firearm by a felon; counsel was not ineffective for failing to move to suppress the evidence on the basis that appellant had not been tried on charges of speeding and driving on a suspended license. Whether a police officer has probable cause to make a traffic stop does not depend on whether the driver was actually guilty of the violation which the officer believed to have occurred. White v. State, 2009 Ark. 225, — S.W.3d — (2009).

Private Citizens.

Trial court correctly determined that the wife was not acting as a state actor at the time she searched her husband's belongings; further, defendant's argument that his wife lacked authority to turn the items she discovered over to the authorities was without merit. Bruce v. State, 367 Ark. 497, 241 S.W.3d 728 (2006).

Public Places.

Trial court properly denied defendants' motion to suppress evidence seized from their garbage container outside the curtilage of their home; defendants exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment and State constitution protection. Rikard v. State, 354 Ark. 345, 123 S.W.3d 114 (2003).

Reasonableness.

In defendant's drug case, a court properly denied defendant's motion to suppress evidence where the door entered by officer could not be locked, there was no screening around the area, and one could walk between the wooden posts; furthermore, the trailer door, not the door on the outside of what the officers described as the carport, was the door that was approached and knocked upon when desiring entry into the trailer. Loy v. State, 88 Ark. App. 91, 195 S.W.3d 370 (2004).

Trial court erred in denying defendant's motion to suppress where probation officers were not acting in good faith when they went to defendant's home on a "routine visit" as defendant's husband's probation had expired six months before and no evidence existed that defendant consented to a search of her home once the probation officers were inside the home. Bogard v. State, 88 Ark. App. 214, 197 S.W.3d 1 (2004).

Trial court did not err in denying defendant's motion to suppress audio and video recordings of cocaine deliveries at a suspended sentence revocation proceeding because defendant had invited the confidential informant into defendant's home for the purpose of conducting illegal business; it was not reasonable for defendant to believe that the person to whom defendant sold cocaine would not share the information with others. Sherman v. State, 2009 Ark. 275, 308 S.W.3d 614 (2009).

Motorist's complaint brought under the Arkansas Civil Rights Act, § 16-123-101 et seq., alleging that county officers were without jurisdiction to set up a roadblock and that the motorist's subsequent stop, detention, and arrest violated this section, was properly dismissed because the motorist failed to state a claim where the complaint did not assert that the officers' actions were unreasonable. Wade v. Ferguson, 2009 Ark. 618, — S.W.3d — (2009).

Reliability of Informant.

In a possession of methamphetamine case, denial of defendant's motion to sup-

press the seized evidence was proper as there were sufficient facts to support the reliability of the informant: he was identifiable and therefore subject to prosecution for making a false report, the investigator interviewed the informant personally for over an hour in order to determine his reliability, the information was based on personal knowledge and observation of the informant, observation which was verified again by the investigator during the surveillance of defendant and just prior to his arrest, and the investigator testified that he was able to corroborate information that the informant provided based on narcotics investigations and intelligence as well as with his own personal knowledge. Weatherford v. State, 93 Ark. App. 30, 216 S.W.3d 150 (2005).

Standing.

Defendant lacked standing to challenge the search of the murder victim's home because his role as occupant terminated before the death of the victim, and defendant made no showing that he had been an "overnight guest" because defendant told officers that he had gone to the apartment Sunday morning and found the victim. Dunn v. State, 371 Ark. 140, 264 S.W.3d 504 (2007).

Traffic Stops.

Defendant was entitled to suppress evidence of drugs seized from his car when police detained him after the legitimate purpose of the traffic stop ended. Sims v. State, 356 Ark. 507, 157 S.W.3d 530 (2004).

Pretextual conduct by police officer in stopping defendant in order to search his vehicle for contraband did not required the trial court to grant defendant's suppression motion; because the officer had probable cause to stop defendant for a traffic violation, the consensual search that took place thereafter was proper. Lawson v. State, 89 Ark. App. 77, 200 S.W.3d 459 (2004).

Defendant's convictions for possession of drug paraphernalia with intent to manufacture methamphetamine and possession of pseudoephedrine were proper where the patrolman initiated the traffic stop after watching defendant commit a traffic violation, which was failing to stop at a stop sign. Nelson v. State, 365 Ark. 314, 229 S.W.3d 35 (2006), appeal dismissed, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 494 (Sept. 27, 2007).

This section did not support invalidation of a search where a valid traffic stop was made by a police officer who suspected other criminal activity; thus, defendant's argument that the stop was pretextual was based on the erroneous premise that pretextual stops were impermissible, and there were fact justifying the stop of defendant's car, including his erratic driving and the officer's knowledge that defendant was driving without a valid driver's license. Casey v. State, 97 Ark. App. 1, 242 S.W.3d 627 (2006).

Trial court did not err in denying defendant's motion to suppress on the basis that a traffic stop was not completed at the time that a canine sniff was conducted where the testimony of the arresting officer revealed that although the arresting officer made no specific request to do so, defendant encouraged the arresting officer to "go ahead and use your dog" well within the time limits of the traffic stop. Davis v. State, 99 Ark. App. 173, 258 S.W.3d 401 (2007).

Evidence seized upon defendant's arrest did not violate his rights under the U.S. Constitution, or this section of the Arkansas Constitution, or Ark. R. Crim. P. 3.1 and 4.1, because defendant's erratic driving in a high crime area provided a reasonable suspicion to stop him, and defendant's attempts to hide his identity from the officer provided probable cause for his arrest. Mosley v. State, 2009 Ark. App. 799, — S.W.3d — (2009).

Evidence obtained in a stop of defendant's vehicle for speeding on the interstate should have been suppressed under this section of Article 2 because, pursuant to § 12-8-106(h)(2), a municipal police department did not have the authority to make a selective-traffic enforcement type of traffic stop on the interstate. McKim v. State, 2009 Ark. App. 834, — S.W.3d — (2009).

Trial court erred in denying defendant's motion to suppress evidence of marijuana that was found in defendant's vehicle after it was stopped for having an improperly displayed license plate because under § 27-14-704, all that was required was that defendant's foreign license plate conspicuously display the registration number; the registration number of the vehicle was conspicuously displayed. Hinojosa v.

State, 103 Ark. App. 312, 288 S.W.3d 718 (2008), rev'd, 2009 Ark. 301, 319 S.W.3d 258 (2009).

Evidence should have been suppressed in a drug case because a state trooper's post-warning questioning of defendant was not a consensual police-citizen encounter since a reasonable person would not have felt like he could have left without answering; since there was no reasonable suspicion under Ark. R. Crim. P. 3.1, an illegal detention resulted. Bedsole v. State, 104 Ark. App. 253, 290 S.W.3d 607 (2009).

Police officer engaged in racial profiling prohibited by state statute, the state constitution, the U.S. Constitution, and the city's written policy and the officer also illegally seized one of the plaintiffs, thereby violating U.S. Const., Amend. IV and the state constitution; the police chief, who supervised the officer and ran the police department, was deliberately indifferent to ongoing and systemic racial profiling of which he was aware and municipal liability was imposed on the city as it permitted the officer to establish and to carry out a custom and practice of engaging in racial profiling. The officer's true objective was not to enforce traffic laws prohibiting people from driving with their vision obstructed or other minor infractions; rather, the neutral traffic laws were used as a pretext for harassing Hispanics (whether here legally or illegally), for obtaining money through fines and towing charges for the financially troubled city, and to provide an incentive for Hispanics to move out of the area—clearly illegitimate objectives. Giron v. City of Alexander, 693 F. Supp. 2d 904 (E.D. Ark. 2010).

It was error to grant a motion to suppress drug evidence obtained in a traffic stop on the ground that the stop for a traffic violation was a pretext for searching for drugs because the pretextual stop was not impermissible under either the federal or Arkansas Constitution and, thus, did not invalidate the otherwise lawful stop of the vehicle. State v. Mancia-Sandoval, 2010 Ark. 134, — S.W.3d — (2010).

Trial court did not err in denying appellant's petition for postconviction relief under Ark. R. Crim. P. 37.1 because appellant did not establish that his trial counsel was ineffective for failing to preserve the issue of whether this section required an officer requesting consent for a search to advise the driver of an automobile that he or she had the right to refuse to consent to the search, and under the circumstances and precedent as existed at the time of appellant's trial, counsel's conduct did not fall outside the wide range of reasonable professional assistance since counsel was not ineffective simply because he did not raise an argument that would have been largely against established precedent and would have required exceptionally thoughtful and extensive analysis; good cause for an extension to vehicles of the rule that officers who utilize the knock-and-talk procedure must inform a home dweller that he or she has the right to refuse consent to the search will require something more than the mere recitation of Ark. Const. Art. 2, § 15. Jones v. State, 2010 Ark. 470, — S.W.3d — (2010).

Warrantless Arrest.

Trial court did not err in finding that defendant's arrest was valid; given that defendant was the last person seen at the crime scene, defendant's girlfriend gave police the murder weapon, and defendant had access to a gun, the police had probable cause to arrest defendant without a warrant pursuant to Ark. R. Crim. P. 4.1. Winston v. State, 355 Ark. 11, 131 S.W.3d 333 (2003).

Motion to suppress evidence was properly denied based on an allegedly illegal arrest because, where officers saw two defendants enter two retail stores and purchase pseudoephedrine, there was probable cause to arrest them under Ark. R. Crim. P. 4.1(a)(iii); the officers suspected that defendants were over the legal limit due to their purchases. Champlin v. State, 98 Ark. App. 305, 254 S.W.3d 780 (2007).

Where a confidential informant appeared at a drug dealer's home to buy drugs, the drug dealer's wife contacted defendant, and defendant immediately left his home carrying a package, drove to the dealer's home, entered the home without knocking, and left a short time thereafter without the package, the police had probable cause to effect a warrantless arrest of defendant because the evidence essentially established a call by a known drug dealer requesting the delivery of narcotics from a supplier, immediate

movement by a known drug supplier who was the suspected supplier, direct travel by that supplier to the source of the supply request, and the apparent delivery of a package. While this proof may not have been sufficient to convict defendant, it provided sufficient probable cause to make an arrest, and a search of defendant incident to that arrest was proper. Pullan v. State, 104 Ark. App. 78, 289 S.W.3d 180 (2008).

—Pretextual.

If an initial arrest is simply a pretext to search, the search cannot stand, and a pretextual arrest exists if an officer would not have gone to a defendant's home to arrest him otherwise. Henley v. State, 95 Ark. App. 108, 234 S.W.3d 316 (2006).

Warrantless Search.

Trial court erred in denying defendant's motion to suppress where the officer conceded at the suppression hearing that he never advised defendant of his right to refuse to consent to the search such that the search of the house was invalid; under Ark. Const. art. 2, § 16, an officer who utilizes the knock-and-talk technique is required to inform the home dweller that he or she has the right to refuse to consent to the search. Carson v. State, 363 Ark. 158, 211 S.W.3d 527 (2005).

Trial court erred in denying an appellant's motion to suppress evidence seized during a search conducted following a knock-and-talk encounter where the officer who conducted the search conceded at the suppression hearing that he had not informed the appellant of his right to refuse consent to the search and under applicable case law, such a failure violated Ark. Const. art. 2, § 15. Carson v. State, 363 Ark. 158, 211 S.W.3d 527 (2005).

Failure of officers to advise a person that he or she has the right to refuse consent to a search of his or her home violates the right against warrantless intrusions into the home; however, such holding does not extend to the search of a vehicle. Welch v. State, 364 Ark. 324, 219 S.W.3d 156 (2005).

Search of defendant's vehicle was not in violation of the Arkansas Constitution because the knock-and-talk procedure, during which officers were required to inform a home dweller that he or she had the right to refuse consent to a search, did not apply to the search of a vehicle; hence, defendant's motion to suppress evidence was properly denied because defendant consented to the search. Welch v. State, 364 Ark. 324, 219 S.W.3d 156 (2005).

Trial court properly denied defendant's motion to suppress a crack pipe that was found in a vehicle in which he was a passenger because the officer's initial approach of the vehicle was valid under Ark. R. Crim. P. 2.2; although defendant might have been illegally seized when the officer ordered him out of the vehicle, the driver of the vehicle gave consent to the vehicle search independent of any violation of defendant's rights, and defendant lacked standing to challenge the vehicle search. Swan v. State, 94 Ark. App. 115, 226 S.W.3d 6 (2006).

One of the established exceptions to the requirements of both a warrant and probable cause is a search conducted pursuant to consent and that a co-occupant has the authority to consent to a search; thus, the search of the vehicle's exterior was within the scope of the consent granted by the driver, and the police officer's observations of modifications beneath the bed of the truck indicative of a false compartment for the concealment of contraband gave rise to probable cause to perform the more intrusive search of drilling holes in the truck's bed. Turner v. State, 94 Ark. App. 259, 229 S.W.3d 588 (2006).

Consent-in-advance clauses that are signed by parolees or probationers are not constitutionally infirm as long as the consent agreement meets certain criteria; in order to support a warrantless search, the form must amount to a consent to search, and the search must be conducted in accordance with the terms of the consent granted. Henley v. State, 95 Ark. App. 108, 234 S.W.3d 316 (2006).

Trial court erred in denying defendant's motion to suppress marijuana seized from the trunk of a rental car that he was driving where a deputy lacked reasonable suspicion to detain him past the end of a traffic stop to conduct a canine sniff of the car; the legitimate purpose of the traffic stop ended when the deputy issued defendant a warning for following too closely, announced that he was not issuing a citation for driving with a suspended license, and returned the materials to defendant without taking further action. Enriquez v.

State, 97 Ark. App. 62, 244 S.W.3d 696 (2006).

Where an officer drove past a closed gas station where he observed two vehicles in the parking lot, there were no signs of criminal activity, no moving violations, nor any defective equipment on the vehicles; nonetheless, he stopped one vehicle, questioned the driver, asked him to get out of the car, and seized marijuana from the vehicle and defendant's person. The trial court erred by denying defendant's motion to suppress the evidence, because the police encounter was illegal; there was no evidence to suggest that community caretaking was the reason for the encounter. Dosia v. State, 2009 Ark. App. 429, 318 S.W.3d 583 (2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 552 (Sept. 10, 2009).

After defendant's arrest for driving without a valid driver's licence, an officer saw marijuana seeds under the driver's seat, detected a faint odor of marijuana in the vehicle, and noticed the gas tank exhibited signs of tampering, typical of drug-smuggling; the officer gleaned probable cause to search the vehicle for narcotics as he waited for the wrecker to tow the vehicle to impound. Lopez v. State, 2009 Ark. App. 750, — S.W.3d — (2009).

Search incident to arrest was proper under this section because probable cause supported defendant's DWI arrest in that a restaurant manager had reported that defendant was intoxicated, the officer discovered defendant sitting in his vehicle, with the keys in the ignition, and defendant failed two field sobriety tests. Stewart v. State, 2010 Ark. App. 9, — S.W.3d — (2010).

Trial court properly denied defendant's motion to suppress marijuana taken from defendant's property, as defendant did not have a reasonable expectation of privacy in the area from which an officer observed the marijuana in plain sight because the area would have been used by anyone responding to defendant's signs advertising that defendant had pigs for sale. Percefull v. State, 2011 Ark. App. 378, — S.W.3d — (2011).

—Expectation of Privacy.

Defendant did not have standing to challenge the search and seizure or knock-and-talk procedures orchestrated by police officers; defendant stated several times on the stand that the trailer being searched was not his home, and he offered no proof that he owned, leased, or maintained any control over the trailer. Gaylord v. State, 354 Ark. 511, 127 S.W.3d 507 (2003).

Defendant's motion to suppress evidence was properly denied where, given the testimony of the police officers, the items initially seen by the officers were outside the shed and porch of the mobile home; an expectation of privacy in driveways and walkways was not generally considered reasonable. Russell v. State, 85 Ark. App. 468, 157 S.W.3d 561 (2004).

Officer's observation of defendant's truck and the air compressor in it in the backyard did not amount to a search because those items were in plain view; the officer testified that he could see defendant's truck from the road, and he made those observations from a lawful vantage point. Defendant had no reasonable expectation of privacy in the road leading to his residence, nor did he have a reasonable expectation of privacy in his driveway. Tryon v. State, 371 Ark. 25, 263 S.W.3d 475 (2007).

—Grounds.

Motion to suppress evidence was properly denied in a drug case where the evidence showed that a search based on a pretextual stop was valid; the officer had probable cause for the stop since the vehicle was speeding, consent to search was given by the registered owner, and the consent was not limited to exclude containers found inside the vehicle. Flores v. State, 87 Ark. App. 327, 194 S.W.3d 207 (2004).

Trial court did not err in denying defendant's motion to suppress marijuana seized after a search of his vehicle where the officer developed a reasonable suspicion that defendant was committing a felony based on defendant's unusual travel plans and exhibited nervousness, and the officer's detection of a strong odor of fabric sheets, as opposed to air freshener, which the officer testified were often used to mask the odor of illegal controlled substances; further, the presence of a very large suitcase was suspicious in light of a car-rental agreement lasting only four days. Ayala v. State, 90 Ark. App. 13, 203 S.W.3d 659 (2005).

Evidence present outside defendant's apartment, including the location of the

body, the "bloody-drag trail," and blood visible on the floor inside the apartment, established probable cause to search defendant's apartment; thus, even if police had not illegally entered the apartment, they would have later entered under a valid search warrant and inevitably discovered the alleged tainted evidence. Newton v. State, 366 Ark. 587, 237 S.W.3d 451 (2006).

—Incident to Arrest.

Trial court properly denied defendant's motion to suppress evidence of methamphetamine that was in his car because the search of defendant's car was clearly permitted as an incident of his arrest on outstanding warrants. McDonald v. State, 92 Ark. App. 1, 210 S.W.3d 915 (2005).

— —Unreasonable.

Drug manufacturing evidence should have been suppressed where officers entered defendant's residence seeking persons named in arrest warrants, which was a search under Ark. R. Crim. P. 10.1; because the person allowing consent was not advised that she could refuse consent, the search violated Ark. R. Crim. P. 11.1(c), the Fourth Amendment, and Ark. Const. art. 2, § 15. Burroughs v. State, 96 Ark. App. 289, 241 S.W.3d 280 (2006).

—Plain View.

Police did not violate this section by recording VIN numbers of stolen vehicles located in defendant's driveway; police did not need a warrant because defendant did not have a reasonable expectation of privacy in his driveway and the VIN numbers were in plain view. McDonald v. State, 354 Ark. 216, 119 S.W.3d 41 (2003).

—Unreasonable.

Based on a search pursuant to a federal warrant, the officers knew the mailed package contained drugs, but when the officers delivered the package to defendant, entered defendant's residence through a closed screen door without a warrant, then pursued defendant, who fled to the bathroom with the package, the purported exigent circumstances were manufactured by the officers and the trial court erred in denying defendant's motion to suppress. Mann v. State, 84 Ark. App. 225, 137 S.W.3d 411 (2003), aff'd, 357 Ark. 159, 161 S.W.3d 826 (2004).

Failure of three task force agents to advise one defendant who answered the door that she had the right to refuse consent to a search of her residence violated both defendants' rights against warrantless intrusions into the home; hence, the court properly granted defendants' motions to suppress the evidence seized during the search. State v. Brown, 356 Ark. 460, 156 S.W.3d 722 (2004).

In a "knock and talk" procedure whereby police officers went to defendants' residence without sufficient probable cause to obtain a search warrant and ask the first defendant to allow them entry and, after gaining entry, informed her that they were investigating potential criminal activity and requested permission to search, none of the officers informed the second defendant that he had the right to refuse consent to the entry and subsequent search of his home; thus, the trial court should have granted the second defendant's motion to suppress all of the evidence that flowed from that unconstitutional search. Woolbright v. State, 357 Ark. 63, 160 S.W.3d 315 (2004).

Court erred by denying defendant's motion to suppress evidence where defendant did not voluntarily consent to a search of his home and his offer to show officers his artwork was not an invitation to enter his home and conduct a search but, rather, defendant intended to go inside his home and retrieve printed copies of his artwork to bring outside and show the officers; further, there was no break in time or other intervening event between the illegal warrantless entry into defendant's home, his written consent to search the home, and his written statement, thus, the primary taint of the unlawful warrantless entry into the home had not been sufficiently attenuated or purged. Dendy v. State, 93 Ark. App. 281, 218 S.W.3d 322 (2005).

Warrantless nighttime intrusion into defendants' home was improper under Ark. R. Crim. P. 14.3 as there were no exigent circumstances and the forced entry was not a tactic that comported with the Fourth Amendment or Ark. Const. art. II, § 15; ample opportunity existed for the police to obtain a warrant. Robbins v. State, 94 Ark. App. 393, 231 S.W.3d 79 (2006).

Trial court erred in denying defendant's motion to suppress evidence where the search of his home after officers smelled a chemical odor did not fall within a "proba-

tion exception" to the warrant requirement; defendant's probation agreement outlining his consent to visit and be visited by his "supervising officer" did not amount to a consent-in-advance to search his home. Henley v. State, 95 Ark. App. 108, 234 S.W.3d 316 (2006).

Warrants.

Officers' search of a safe was within the scope of the search authorized by the warrant because the safe was large enough to contain drugs, drug paraphernalia and the second handgun described by the informant. The fact that the officers had already discovered some drugs and drug paraphernalia did not preclude them from continuing to search for drugs and drug paraphernalia and the second handgun. State v. Stites, 2009 Ark. 154, 300 S.W.3d 103 (2009).

When a legitimate search is under way, and when its purpose and its limits have been precisely defined, police officers need not obtain a second warrant to search containers found during a premises search. State v. Stites, 2009 Ark. 154, 300 S.W.3d 103 (2009).

—Grounds.

Trial court did not err in denying defendant's motion to suppress evidence where defendant was searched pursuant to an arrest warrant because no contemporaneous recording of oral testimony was necessary to support a bench warrant's probable cause requirement. Blanchett v. State, 368 Ark. 492, 247 S.W.3d 477 (2007).

—Issuance/Grounds.

Search warrant was not invalid based on the fact that the issuing judge had recused himself from defendant's prior cases because defendant's son had been charged with burglarizing the judge's home; defendant presented no evidence to indicate that the judge was biased against him when signing the search warrant at issue, and did not challenge the sufficiency of the affidavit issued in support of the warrant or otherwise indicate that the search warrant was defective in any manner but for the fact that it was issued by that particular judge. Davis v. State, 367 Ark. 341, 240 S.W.3d 110 (2006).

—Sufficiency.

Reasonable cause existed to issue search warrants where affidavits cited anonymous tips and indicated that a police canine alerted numerous times on defendant's storage unit; further, an officer testified that the dog cost $10,000, that he had used him in the past, and that "he did a good job" and, thus, there was information known to one of the executing officers that bolstered the reliability of the canine. Blevins v. State, 95 Ark. App. 218, 235 S.W.3d 921 (2006).

Cited: Nelson v. State, 92 Ark. App. 275, 212 S.W.3d 31 (2005); Steinmetz v. State, 366 Ark. 222, 234 S.W.3d 302 (2006); Sheridan v. State, 368 Ark. 510, 247 S.W.3d 481 (2007).

§ 16. Imprisonment for debt.

CASE NOTES

Contempt Power.

Although the parties had agreed to each pay one-half the college expenses of any child that chose to attend college, where the mother later declined to pay her half, the trial judge clearly erred in holding the mother in contempt because she demonstrated by more than a preponderance of the evidence that her failure to reimburse the father for college expenses was not due to "willful obstinacy," but financial inability coupled with ill health; also relevant and material were the mother's assertions that their adult daughter's illness required her to take care of their granddaughter and assume some of those financial responsibilities, and the trial judge's exclusion of the latter evidence unfairly interfered with the mother's defense and constituted an abuse of discretion. Aswell v. Aswell, 88 Ark. App. 115, 195 S.W.3d 365 (2004).

§ 17. Attainder — Ex post facto laws.

CASE NOTES

Analysis

Contract Impairment.
—Public Contracts.
Ex Post Facto.

Contract Impairment.

—Public Contracts.

Contract Clause claims under U.S. Const. Art. 1, § 10 and Ark. Const. Art. 2, § 17 failed because defendants properly terminated the collective bargaining agreement; therefore, there was no contractual obligation that was impaired. AFSCME, Local 380 v. Hot Spring County, 362 F. Supp. 2d 1035 (W.D. Ark. 2004).

Ex Post Facto.

Sex Offender Screening and Risk Assessment Committee's assessment as a sex offender as a level four offender based on convictions which occurred before the effective date of the Sex Offender Registration Act (SORA) did not violate the ex post facto prohibitions of U.S. Const., Art. I, § 10 and this section. Because the Sex Offender Registration Act is not a form of punishment, the Supreme Court of Arkansas held that it cannot be considered a violation of the ex post facto clauses of the United States and Arkansas Constitutions. Parkman v. Sex Offender Screening & Risk Assessment Comm., 2009 Ark. 205, 307 S.W.3d 6 (2009).

2009 Ark. Acts 1296, amending § 5-4-617, applied to all who would be executed after its enactment, and it did not change either the inmate's criminal liability or his sentence; because the Act would not be retroactively applied, it did not violate the ex post facto clause, and the trial court had to lift the injunction staying the inmate's execution. Ark. Dep't of Corr. v. Williams, 2009 Ark. 523, — S.W.3d — (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 823 (Dec. 10, 2009), cert. denied, Williams v. Hobbs, — U.S. —, 131 S. Ct. 271, 178 L. Ed. 2d 179 (2010).

§ 18. Privileges and immunities — Equality.

RESEARCH REFERENCES

Ark. L. Rev. Lessons From Lake View: Some Questions and Answers from Lake View School District No. 25 v. Huckabee, 56 Ark. L. Rev. 519 (2003).

U. Ark. Little Rock L.J. Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 U. Ark. Little Rock L. Rev. 681.

Annual Survey of Caselaw, Constitutional Law, 25 U. Ark. Little Rock L. Rev. 908.

Note, Constitutional Law — Education and Equal Protection — Towards Intelligence and Virtue: Arkansas Embarks on a Court-Mandated Search for an Adequate and Equitable School Funding System. Lake View School District No. 25 v.Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002), 26 U. Ark. Little Rock L. Rev. 143 (2003).

Funding the Education of Arkansas's Children: A Summary of the Problems and Challenges, 27 U. Ark. Little Rock L. Rev. 1.

CASE NOTES

Analysis

Business.
Selective Prosecution.
Taxation.
—Business.

Business.

Where a tobacco products manufacturer which did not participate in a settlement between states and tobacco companies alleged that an amendment to a statute

implementing the settlement provided unequal treatment depending upon whether an entity participated or did not participate in the settlement, no equal protection violation was shown since the amendment bore a rational relationship to the state's interest in reducing the rate of smoking in the state. Dos Santos v. Beebe, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Selective Prosecution.

Defendant circuit court judge failed to provide proof that the prosecutor charged him with attempting to evade or defeat a state tax based on an impermissible motive; elected officials were not members of a protected class for equal protection purposes, and there was no evidence that the prosecutor assigned to defendant's case was involved in the decisions to charge other persons with violations of § 26-18-201(a). Davis v. State, 94 Ark. App. 240, 228 S.W.3d 529 (2006).

Taxation.

—Business.

Tobacco product distributors' equal protection claims concerning § 26-57-261 were dismissed where distributors were not required to pay more for their Arkansas sales than would a participating manufacturer. Grand River Enters. Six Nations, Ltd. v. Beebe, 418 F. Supp. 2d 1082 (W.D. Ark. 2006).

§ 19. Perpetuities and monopolies.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Fifty-one Flowers: Post-Perpetuities War Law and Arkansas's Adoption of USRAP, 29 U. Ark. Little Rock L. Rev. 411.

CASE NOTES

Analysis

Monopolies.
—Sanitation Services.

Monopolies.

Where a tobacco products manufacturer which did not participate in a settlement between states and tobacco companies alleged that an amendment to § 26-57-261 implementing the settlement had the effect of causing or allowing participating companies to conduct their business as though they were part of an output cartel, to the extent that the amendment might foster monopolistic conduct, the amendment did not violate the state constitution since the regulatory scheme of which the amendment formed a part was created to serve the public interest in combating the serious health effects of smoking. Dos Santos v. Beebe, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Section 26-57-261 did not violate Ark. Const. art. 2, § 19 where the emergency clause enacting the regulatory scheme showed that it was created to serve the public interest in protecting public health. Grand River Enters. Six Nations, Ltd. v. Beebe, 418 F. Supp. 2d 1082 (W.D. Ark. 2006).

—Sanitation Services.

Ensuring adequate waste disposal resources was a valid exercise of the state's police power to protect public health, thus, a de facto monopoly, if it did exist, was necessary to carry out the Northwest Arkansas Regional Solid Waste Management District's statutory duties; further, its regulation requiring that solid waste be disposed at either in-district or out-of-state landfills, unless otherwise authorized by the district, did not violate this section. IESI AR Corp. v. Northwest Arkansas Regional Solid Waste, 433 F.3d 600 (8th Cir. 2006).

§ 21. Life, liberty and property — Banishment prohibited.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 U. Ark. Little Rock L. Rev. 681.

CASE NOTES

Taking of Property.

Insureds had no protected property right in any coverage beyond the lapse date and, thus, there was no protected property or liberty interest that could have given rise to a due process claim, as contended by the insureds, who argued that their rights were violated when the insurer failed to give them actual notice of non-renewal; there was no state action because the action was taken by an insurance company, and the use of the United States mail to give notice under § 23-89-306 did not rise to the level of state action. Johnson v. Encompass Ins. Co., 355 Ark. 1, 130 S.W.3d 553 (2003).

Where an amendment to a statute implementing a settlement between states and tobacco companies required a non-participating manufacturer to pay amounts in escrow pending any finding of future liability, the post-deprivation remedy of either returning the escrowed funds at the end of 25 years or litigation if the right to return was disputed was constitutionally sufficient. Dos Santos v. Beebe, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Where a tobacco products manufacturer which did not participate in a settlement between states and tobacco companies alleged that an amendment to a statute implementing the settlement improperly eliminated a refund of the manufacturer's escrowed overpayments in the settlement account for the prior year, the retroactive application of the amendment properly stated a claim for violation of the manufacturer's constitutional right to substantive due process. Dos Santos v. Beebe, 418 F. Supp. 2d 1064 (W.D. Ark. 2006).

Cited: In re Brandenburg, 83 Ark. App. 298, 126 S.W.3d 732 (2003).

§ 22. Property rights — Taking without just compensation prohibited.

RESEARCH REFERENCES

ALR. Elements and Measure of Compensation in Eminent Domain Proceeding for Temporary Taking of Property. 49 A.L.R.6th 205.

Zoning Scheme, Plan, or Ordinance as Temporary Taking. 55 A.L.R.6th 635.

Ark. L. Rev. The New Judicial Federalism Takes Root in Arkansas, 58 Ark. L. Rev. 883.

Post-Kelo Determination of Public Use and Eminent Domain in Economic Development Under Arkansas Law, 59 Ark. L. Rev. 43.

CASE NOTES

Analysis

Compensation.
Eminent Domain Proceedings.
Pipelines.
Public Use.

Compensation.

Trial court erred in awarding summary judgment to the Arkansas State Highway Commission (ASHC) in its condemnation action against a lessee that had a bill-

board on the condemned property where the facts were not sufficiently developed to make a ruling as to whether the income that the lessee sought to recover was business income or rental income. Lamar Advantage Holding Co. v. Arkansas State Hwy. Comm'n, 369 Ark. 295, 253 S.W.3d 914 (2007).

In a condemnation action, the property owners incurred expenses in successfully defending the appeal. To place them in the same position they were in prior to the taking by the water district, the appellate court granted their request for attorney's fees and costs that were incurred during their defending of the appeal. Beaver Water Dist. v. Garner, 102 Ark. App. 188, 283 S.W.3d 595 (2008).

Eminent Domain Proceedings.

Commission was entitled to summary judgment in an owner's suit to establish a road across the commission's land because the proposed easement would have divested the state, via the commission, of the sole right to occupy the property at issue; Ark. Const. Art. 7, § 28, by itself, did not grant eminent domain power to county court to establish roads. The owner did not plead as part of his petition to establish a road that the commission was taking his property by withholding access in violation of the takings clause of the constitution. Ark. Game & Fish Comm'n v. Eddings, 2011 Ark. 47, — S.W.3d — (2011).

Pipelines.

Section 23-15-101 did not violate this section because it had not granted the power of eminent domain to a pipeline company for a private use; the pipeline was available to multiple natural gas producers and was to be operated by the pipeline company as a common carrier so that the public had equal rights to its use. Smith v. Ark. Midstream Gas Servs. Corp., 2010 Ark. 256, — S.W.3d — (2010).

Public Use.

Section 23-15-101 was constitutional as applied and did not violate this section where it granted a private gas company the right of eminent domain to construct and maintain a natural gas pipeline over private land and the gas company operated the pipeline as a common carrier, giving the public the equal right to use the pipeline. Linder v. Ark. Midstream Gas Servs. Corp., 2010 Ark. 117, — S.W.3d — (2010).

Landowners' property was taken for public use in compliance with this section; by electing to operate its gathering line as a common carrier, a pipeline company gave the public the equal right to use the pipeline to transport natural gas to the market. Arkansas Midstream Gas Servs. Corp., 2010 Ark. 480, — S.W.3d — (2010).

§ 23. Eminent domain and taxation.

RESEARCH REFERENCES

ALR. Elements and Measure of Compensation in Eminent Domain Proceeding for Temporary Taking of Property. 49 A.L.R.6th 205.

Zoning Scheme, Plan, or Ordinance as Temporary Taking. 55 A.L.R.6th 635.

Ark. L. Rev. Post-Kelo Determination of Public Use and Eminent Domain in Economic Development Under Arkansas Law, 59 Ark. L. Rev. 43.

CASE NOTES

In General.

Because the property owner failed to perfect his appeal within 30 days under Ark. Inferior Ct. R. 9, the trial court did not have jurisdiction to hear the issues that arose out of the city's resolution to destroy his building; no due process violation occurred where the owner had an opportunity to be heard at a meaningful time and in a meaningful manner. Ingram v. City of Pine Bluff, 355 Ark. 129, 133 S.W.3d 382 (2003).

§ 24. Religious liberty.

RESEARCH REFERENCES

ALR. Landlord's refusal to rent to unmarried couple as protected by landlord's religious beliefs. 10 A.L.R.6th 513.

Constitutionality of Legislative Prayer Practices. 30 A.L.R.6th 459.

Application of First Amendment's "Ministerial Exception" or "Ecclesiastical Exception" to State Civil Rights Claims. 53 A.L.R.6th 569.

Prohibition of Federal Agency's Keeping of Records on Methods of Individual Exercise of First Amendment Rights, Under Privacy Act of 1974 (5 USCS § 552a(e)(7)). 20 A.L.R. Fed. 2d 437.

Ark. L. Rev. The New Judicial Federalism Takes Root in Arkansas, 58 Ark. L. Rev. 883.

CASE NOTES

Analysis

In General.
Children.
Commercial Activities.
Evidence.

In General.

Where a state conditions receipt of an important benefit upon conduct proscribed by a religious faith or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on adherents to modify their behavior and to violate their beliefs, a burden upon religion exists; while the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial. Guaranteed Auto Fin., Inc. v. Dir., ESD, 92 Ark. App. 295, 213 S.W.3d 39 (2005).

Circuit court did not violate the First Amendment nor this section by applying neutral law principles concerning a Buddhist temple's election procedures; provisional ballots were counted and did not change the election results and the temple board of directors, as duly appointed representative of membership, had authority to dismiss the abbot and monks. Viravonga v. Wat Buddha Samakitham, 372 Ark. 562, 279 S.W.3d 44 (2008).

Children.

Because parents were permitted to contract regarding the religious upbringing of their children, a trial court did not err in refusing to find that an order enjoining a former husband from promoting a different faith to his children, in violation of this type of agreement, constituted a miscarriage of justice under Ark. R. Civ. P. 60(a). Moreover, it did not violate his First Amendment rights, the Establishment Clause, or any correlating provision of the Arkansas Constitution. Rownak v. Rownak, 103 Ark. App. 258, 288 S.W.3d 672 (2008).

Commercial Activities.

Arkansas Board of Review properly held that employee was entitled to unemployment benefits under § 11-10-513(a)(1) where the employee had good cause to leave once his constitutionally protected religious beliefs diverged with his job requirement of working on Saturdays as an automobile salesman; the employee could not be denied unemployment compensation solely because he chose his religion over his job. Guaranteed Auto Fin., Inc. v. Dir., ESD, 92 Ark. App. 295, 213 S.W.3d 39 (2005).

Evidence.

Department of Health Services did not violate a father's free exercise of religion by creating a reunification plan which required the father to obtain housing and employment separate and apart from a ministry compound because the state's interest in preventing potential harm to the father's minor children outweighed the father's conscientious choice to live on ministry property, work for the ministry, and depend on the ministry for the family's every need. Thorne v. Ark. Dep't of Human Servs., 2010 Ark. App. 443, — S.W.3d — (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 372 (June 24, 2010), overruled in part, Myers v. Ark. Dep't of Human Servs., 2011 Ark. 182, — S.W.3d — (2011).

§ 25. Protection of religion.

RESEARCH REFERENCES

ALR. Constitutionality of Legislative Prayer Practices. 30 A.L.R.6th 459.

Prohibition of Federal Agency's Keeping of Records on Methods of Individual Exercise of First Amendment Rights, Under Privacy Act of 1974 (5 USCS § 552a(e)(7)). 20 A.L.R. Fed. 2d 437.

§ 29. Enumeration of rights of people not exclusive of other rights — Protection against encroachment.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Note: Constitutional Law-Privacy and Equal Protection-Arkansas Joins Other States in a Revival of State Constitutions as Guardians of Individual Rights, Establishing New Protections for Arkansas Gays and Lesbians, Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002), 25 U. Ark. Little Rock L. Rev. 681.

ARTICLE 3

Franchise and Elections

§ 1. Qualifications of electors.

Except as otherwise provided by this Constitution, any person may vote in an election in this state who is:

(1) A citizen of the United States;

(2) A resident of the State of Arkansas;

(3) At least eighteen (18) years of age; and

(4) Lawfully registered to vote in the election. [As amended by Const. Amend. 85.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by S.J.R. 4 (now Amend. 85) during the 2007 Regular Session and adopted at the 2008 general election by a vote of 714,128 for and 267,326 against.

Prior to amendment, this section read:

"§ 1. Qualifications of electors — Equal suffrage — Poll tax.

Every citizen of the United States of the age of twenty-one years, who has resided in the State twelve months, in the county six months, and in the precinct, town or ward one month, next preceding any election at which they may propose to vote, except such persons as may for the commission of some felony be deprived of the right to vote by law passed by the General Assembly, and who shall exhibit a poll tax receipt or other evidence that they have paid their poll tax at the time of collecting taxes next preceding such election, shall be allowed to vote at any election in the State of Arkansas, provided, that persons who make satisfactory proof that they have attained the age of twenty-one years since the time of assessing taxes next preceding said election and possess the other necessary qualifications, shall be permitted to vote; and, provided, further,

that the said tax receipt shall be so marked by dated stamp or written endorsement by the judges of election to whom it may be first presented as to prevent the holder thereof from voting more than once at any election. It is declared to be the purpose of this amendment to deny the right of suffrage to aliens and it is declared to be the purpose of this amendment to confer suffrage equally upon both men and women, without regard to sex; provided, that women shall not be compelled to serve on juries. [As amended by Const. Amend. 8.]"

RESEARCH REFERENCES

ALR. Validity, construction, and application of state criminal disenfranchisement provisions. 10 A.L.R.6th 31.

§ 2. Right of suffrage.

Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby such right shall be impaired or forfeited, except for the commission of a felony, upon lawful conviction thereof. [As amended by Const. Amend. 85.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by S.J.R. 4 (now Amend. 85) during the 2007 Regular Session and adopted at the 2008 general election by a vote of 714,128 for and 267,326 against.

Amendments. The 2007 amendment deleted "whereby the right to vote at any election shall be made to depend upon any previous registration of the elector's name; or" following "enacted" and "at common law" following "felony."

RESEARCH REFERENCES

ALR. Validity, construction, and application of state criminal disenfranchisement provisions. 10 A.L.R.6th 31.

CASE NOTES

Void Elections.

Trial court properly held that, where an election for Justice of the Peace provided 183 voters with ballots omitting a selection space for the Justice of the Peace race, the outcome of the election at issue was rendered uncertain and required that the election be voided. Whitley v. Cranford, 354 Ark. 253, 119 S.W.3d 28 (2003).

§ 5. [Repealed.]

Publisher's Notes. Ark. Const., Art. 3, § 5, was repealed effective January 1, 2009, which was proposed by S.J.R. 4 (now Amend. 85) during the 2007 Regular Session and adopted at the 2008 general election by a vote of 714,128 for and 267,326 against.

Prior to amendment, this section read: "§ 5. Idiots and insane persons.

No idiot or insane person shall be entitled to the privileges of an elector."

§ 8. Time of holding elections.

The general elections shall be held biennially, on the days and at times fixed by the General Assembly. [As amended by Const. Amend. 85.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by S.J.R. 4 (now Amend. 85) during the 2007 Regular Session and adopted at the 2008 general election by a vote of 714,128 for and 267,326 against.

Amendments. The 2007 amendment substituted "the days and at times fixed by the General Assembly" for "the first Monday of September; but the General Assembly may, by law, fix a different time."

§ 10. Election officers.

The General Assembly shall determine the qualifications of an election officer. [As amended by Const. Amend. 85.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by S.J.R. 4 (now Amend. 85) during the 2007 Regular Session and adopted at the 2008 general election by a vote of 714,128 for and 267,326 against.

Prior to amendment, this section read:

"No person shall be qualified to serve as an election officer, who shall hold, at the time of the election, any office, appointment, or employment in or under the government of the United States, or of this State, or in any city or county or any municipal board, commission or trust in any city, save only the justices of the peace, and aldermen, notaries public and persons in the militia service of the State. Nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve — save only to such subordinate municipal or local offices, below the grade of city or county officers, as shall be designated by general law."

§ 11. Votes to be counted.

RESEARCH REFERENCES

Ark. L. Notes. Cihak and Springman, HAVA and Arkansas Election Law Reform: Compliance and Promise, 2006 Arkansas L. Notes 1.

ARTICLE 4

Departments

§ 1. Departments of government.

RESEARCH REFERENCES

Ark. L. Rev. Lessons From Lake View: Some Questions and Answers from Lake View School District No. 25 v. Huckabee, 56 Ark. L. Rev. 519 (2003).

Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

U. Ark. Little Rock L.J. Annual Survey of Caselaw, Constitutional Law, 25 U. Ark. Little Rock L. Rev. 908.

Note, Constitutional Law — Education and Equal Protection — Towards Intelli-

gence and Virtue: Arkansas Embarks on a Court-Mandated Search for an Adequate and Equitable School Funding System. Lake View School District No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002), 26 U. Ark. Little Rock L. Rev. 143 (2003).

CASE NOTES

Analysis

Delegation of Powers.
Judiciary Authority.
Prosecutor's Authority.

Delegation of Powers.

The Child Agency Review Board violated the separation of powers doctrine and exceeded the authority given to it by the Arkansas General Assembly when it promulgated § 200.3.2 of the Minimum Licensing Standards for Child Welfare Agencies, which prohibited persons with adult homosexual members in their household from becoming foster parents; although the Board was required to promulgate regulations to protect the health, safety, and welfare of foster children, there was no evidence that living with an adult homosexual placed foster children in danger and the Board was not required to issue regulations based upon moral standards or beliefs. Dep't of Human Servs. v. Howard, 367 Ark. 55, 238 S.W.3d 1 (2006).

Worker's compensation claimant failed to demonstrate a violation of the separation of powers doctrine on the part of any private interest by the procedure used by the Workers' Compensation Commission because it was impossible to do so, as the doctrine dealt solely with the relationship of the three branches of government, and placed no limits whatsoever on private citizens. The claimant failed to assert that the judiciary either assigned or allowed tasks that were more properly accomplished by other branches of the government; neither of the affidavits of former administrative law judges contained any factual violations regarding their judicial independence or integrity caused by the executive branch of the State of Arkansas, and to the contrary, they both asserted that just the opposite was true. Long v. Wal-Mart Stores, 98 Ark. App. 70, 250 S.W.3d 263 (2007), review denied, Long v. Wal-Mart Stores, Inc., — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 428 (May 3, 2007).

Allegedly injured driver brought suit against another motorist, who then brought suit against a third party; the jury determined that the third party was 100 percent at fault. The allegedly injured driver attacked the constitutionality of § 16-55-201 and § 16-55-212, alleging that Ark. Const., Amend. 80, § 3, mandated the supreme court to prescribe all rules of procedure, and that the legislature could not infringe on this power because such an infringement would violate this section and Ark. Const., Art. 4, § 2; however, the matter was moot because any decision by the supreme court would have no practical effect on the case. Shipp v. Franklin, 370 Ark. 262, 258 S.W.3d 744 (2007).

Circuit court violated the separation of powers doctrine under this section and Ark. Const. Art. 4, § 2 by dismissing a charge in a delinquency petition against a juvenile sua sponte, as it usurped a prosecutor's duties under Ark. Const. Amend. 21, § 1 and § 9-27-310(b)(1); thus, the court lacked subject matter jurisdiction to enter the order. State v. D.S., 2011 Ark. 45, — S.W.3d — (2011).

Judiciary Authority.

Trial court properly dismissed the complaint with prejudice because the Arkansas Deceptive Trade Practices Act, § 4-88-101, did not apply to the practice of law, and the Arkansas Supreme Court made rules regulating the practice of law and that responsibility could not be discharged if it were dependent upon or controlled by statutes enacted by the Arkansas General Assembly; the attorney agreed to represent the husband in the medical malpractice action, which was dismissed with prejudice because the attorney was not authorized to practice law in Arkansas. Preston v. Stoops, 373 Ark. 591, 285 S.W.3d 606 (2008).

Because the parties did not dispute that service of process was improper under § 12-62-403, which was constitutional, was substantive legislation, and thus, did not violate the separation of powers doc-

trine in this section, a circuit court's continued exercise of jurisdiction over a national guard member was a plain, manifest, clear, and gross abuse of discretion. Cato v. Craighead County Circuit Court, 2009 Ark. 334, 322 S.W.3d 484 (2009).

Prosecutor's Authority.

Requirement under § 16-89-108(a) and Ark. R. Crim. P. 31.1, that a prosecutor approve defendant's request to plead guilty and waive a jury trial, did not violate separation of powers provisions at Ark. Const. Art. 4, §§ 1 and 2 because defendant had no constitutional right to unilaterally waive a jury trial. Whitlow v. State, 357 Ark. 290, 166 S.W.3d 45 (2004).

Cited: Griffen v. Ark. Judicial Discipline & Disability Comm'n, 355 Ark. 38, 130 S.W.3d 524 (2003).

§ 2. Separation of departments.

RESEARCH REFERENCES

Ark. L. Rev. Lessons From Lake View: Some Questions and Answers from Lake View School District No. 25 v. Huckabee, 56 Ark. L. Rev. 519 (2003).

Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

U. Ark. Little Rock L.J. Annual Survey of Caselaw, Constitutional Law, 25 U. Ark. Little Rock L. Rev. 908.

Note, Constitutional Law — Education and Equal Protection — Towards Intelligence and Virtue: Arkansas Embarks on a Court-Mandated Search for an Adequate and Equitable School Funding System. Lake View School District No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002), 26 U. Ark. Little Rock L. Rev. 143 (2003).

CASE NOTES

Analysis

In General.
Argument Not Considered.
Delegation of Powers.
Judicial Power.
Legislative Power.

In General.

Requirement under § 16-89-108(a) and Ark. R. Crim. P. 31.1, that a prosecutor approve defendant's request to plead guilty and waive a jury trial, did not violate separation of powers provisions at Ark. Const. Art. 4, §§ 1 and 2 because defendant had no constitutional right to unilaterally waive a jury trial. Whitlow v. State, 357 Ark. 290, 166 S.W.3d 45 (2004).

Pursuant to § 14-56-425, the city's Board of Zoning Adjustment (BZA) was an administrative agency and did not have power to legislate; the city's BZA was acting in an adjudicatory or quasi-judicial manner when it denied the owner's variance request; the statute was constitutional as it did not violate the doctrine of separation of powers. City of Fort Smith v. McCutchen, 372 Ark. 541, 279 S.W.3d 78 (2008).

Argument Not Considered.

In a civil forfeiture proceeding, an owner was not entitled to have a default judgment entered in favor of the state set aside based on substantial compliance because the judgment was not void since the summons was sufficient; moreover, the owner failed to present a meritorious defense. Due to that failure, a separation of powers argument was not considered. Solis v. State, 371 Ark. 590, 269 S.W.3d 352 (2007).

Delegation of Powers.

Worker's compensation claimant failed to demonstrate a violation of the separation of powers doctrine on the part of any private interest by the procedure used by the Workers' Compensation Commission because it was impossible to do so, as the doctrine dealt solely with the relationship of the three branches of government, and placed no limits whatsoever on private citizens. The claimant failed to assert that

the judiciary either assigned or allowed tasks that were more properly accomplished by other branches of the government; neither of the affidavits of former administrative law judges contained any factual violations regarding their judicial independence or integrity caused by the executive branch of the State of Arkansas, and to the contrary, they both asserted that just the opposite was true. Long v. Wal-Mart Stores, 98 Ark. App. 70, 250 S.W.3d 263 (2007), review denied, Long v. Wal-Mart Stores, Inc., — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 428 (May 3, 2007).

Allegedly injured driver brought suit against another motorist, who then brought a claim against a third party; the jury determined that the third party was 100 percent at fault. The allegedly injured driver attacked the constitutionality of § 16-55-201 and § 16-55-212, alleging that Ark. Const., Amend. 80, § 3, mandated the supreme court to prescribe all rules of procedure, and that the legislature could not infringe on this power because such an infringement would violate Ark. Const., Art. 4, § 1, and this section; however, the matter was moot because any decision by the supreme court would have no practical effect on the case. Shipp v. Franklin, 370 Ark. 262, 258 S.W.3d 744 (2007).

Medical-costs provision, § 16-55-212(b) violated separation of powers under this section and Ark. Const., Amend. 80, § 3, because rules regarding the admissibility of evidence were within the province of the supreme court. Thomas v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).

Section 16-55-202 was unconstitutional and conflicted with this section and Ark. Const., Amend. 80, § 3 because rules regarding pleading, practice, and procedure were solely the responsibility of the supreme court; the nonparty-fault provision bypassed the rules of pleading, practice and procedure by setting up a procedure to determine the fault of a nonparty and mandating the consideration of that nonparty's fault in an effort to reduce a plaintiff's recovery Thomas v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).

Judicial Power.

The court released jurisdiction of this case because to retain it would disparage the work of the General Assembly and cast the role of the court into that of a brooding super-legislature, when compliance with the mandate to provide adequate and substantially equal education for students in all Arkansas school districts was already well underway; it is not the role of the Supreme Court of Arkansas, as created by the Arkansas Constitution, and under the fundamental principle of separation of powers, to legislate, to implement legislation, or to serve as a watchdog agency when there is no matter to be presently decided. Lake View Sch. Dist. No. 25 v. Huckabee, 358 Ark. 137, 189 S.W.3d 1 (2004).

Workers' compensation claimant's separation of powers argument failed because he did not show that the administrative law judge (ALJ) who decided his case was under pressure or biased in anyway against the claimant because, inter alia, he failed to establish that the ALJ who heard his case was subject to the pressures that had allegedly been exerted by the executive branch against law judges at an earlier time. Murphy v. Forsgren, Inc., 99 Ark. App. 223, 258 S.W.3d 794 (2007).

Trial court properly dismissed the complaint with prejudice because the Arkansas Deceptive Trade Practices Act, § 4-88-101, did not apply to the practice of law, and the Arkansas Supreme Court made rules regulating the practice of law and that responsibility could not be discharged if it were dependent upon or controlled by statutes enacted by the Arkansas General Assembly; the attorney agreed to represent the husband in the medical malpractice action, which was dismissed with prejudice because the attorney was not authorized to practice law in Arkansas. Preston v. Stoops, 373 Ark. 591, 285 S.W.3d 606 (2008).

Because the parties did not dispute that service of process was improper under § 12-62-403, which was constitutional, was substantive legislation, and thus, did not violate the separation of powers doctrine in this section, a circuit court's continued exercise of jurisdiction over a national guard member was a plain, manifest, clear, and gross abuse of discretion. Cato v. Craighead County Circuit Court, 2009 Ark. 334, 322 S.W.3d 484 (2009).

Circuit court violated the separation of powers doctrine under Ark. Const. Art. 4, § 1 and this section by dismissing a charge in a delinquency petition against a juvenile sua sponte, as it usurped a prosecutor's duties under Ark. Const. Amend. 21, § 1 and § 9-27-310(b)(1); thus, the court lacked subject matter jurisdiction to enter the order. State v. D.S., 2011 Ark. 45, — S.W.3d — (2011).

Legislative Power.

Civil Justice Reform Act of 2003, § 16-55-201 et seq., can not be interpreted to permit a jury to apportion fault in a tort suit to an immune nonparty employer because doing so would render the statute unconstitutional. Such an interpretation would violate this section, which bars the state legislature from encroaching on the Arkansas Supreme Court's authority to supervise court procedure. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Cited: Griffen v. Ark. Judicial Discipline & Disability Comm'n, 355 Ark. 38, 130 S.W.3d 524 (2003); Lake View Sch. Dist. No. 25 v. Huckabee, 364 Ark. 398, 220 S.W.3d 645 (2005).

ARTICLE 5

Legislative Department

§ 1. Initiative and Referendum.

RESEARCH REFERENCES

Ark. L. Notes. Sheppard, Intelligible, Honest, and Impartial Democracy: Making Laws at the Arkansas Ballot Box, or Why Jim Hannah and Ray Thorton were Right about *May v. Daniels,* 2005 Arkansas L. Notes 123.

CASE NOTES

Analysis

Construction.

Provision, as to the effect to be given the affidavit of a circulator, is interpreted to mean that the circulator's affidavit is given prima facie verity. But this presumption is not conclusive. Mays v. Cole, 374 Ark. 532, 289 S.W.3d 1 (2008).

Applicability.

Because an ordinance was new legislation with future ramifications, it was a legislative matter subject to a referendum as provided by this amendment. Summit Mall Co. v. Lemond, 355 Ark. 190, 132 S.W.3d 725 (2003).

Ballot Title.

—Sufficiency.

Objection to the ballot title of an initiative concerning a proposed ban on same-sex marriages was overruled because (1) the language was not vague or misleading, (2) the phrase "marital status" was easily understood, (3) the phrases "domestic partnership" and "civil union" should not have been used instead due to their lack of recognition in Arkansas, (4) the ballot title was not required to inform voters of a possible change in the law, and (5) the ballot title was not required to reflect the current state of the law. May v. Daniels, 359 Ark. 100, 194 S.W.3d 771 (2004).

Petition.

Trial court erred in dismissing appellants' complaint challenging the validity of the certification of a "wet/dry" initiative petition for placement upon a ballot at a general election because this section, Ark. Const., Amend. 51, § 9(c)(1), and Ark. Code Ann. § 7-9-101(5) did not allow persons to sign the petition before they became registered voters. Mays v. Cole, 374 Ark. 532, 289 S.W.3d 1 (2008).

—Referendum.

Under § 7-9-101(1), "measure" applied to acts having general application throughout the state, and this definition did not conflict with the definition of measure found in Amendment 7 to Ark. Const. art. 5, § 1; thus there was not any conflict between § 7-9-101(1) and § 7-9-106(b). Kyzar v. City of W. Memphis, 360 Ark. 454, 201 S.W.3d 923 (2005).

Popular Name.

—Sufficiency.

Objection to the popular name of an initiative concerning a proposed ban on same-sex marriages was overruled because "An Amendment Concerning Marriage" was intelligible, honest, and imparial; further, the entire initiative concerned marriage. May v. Daniels, 359 Ark. 100, 194 S.W.3d 771 (2004).

Cited: Kinchen v. Wilkins, 367 Ark. 71, 238 S.W.3d 94 (2006).

§ 3. Senate.

CASE NOTES

Election by Districts.

Candidate's post-election challenge to a state senate runoff election was properly brought within the circuit or district in which alleged voter fraud occurred; further, the secretary of state and the state democratic committee were not indispensable parties for complete relief under Ark. R. Civ. P. 19 because the office of state senator was not a "state office" as that term had been differentiated in §§ 7-7-401 and 7-5-804, and Ark. Const. art. 5, §§ 3 and 4. Willis v. Crumbly, 368 Ark. 5, 242 S.W.3d 600 (2006).

§ 4. Qualifications of senators and representatives.

CASE NOTES

Durational Residence Requirement.

Candidate's post-election challenge to a state senate runoff election was properly brought within the circuit or district in which alleged voter fraud occurred; further, the secretary of state and the state democratic committee were not indispensable parties for complete relief under Ark. R. Civ. P. 19 because the office of state senator was not a "state office" as that term had been differentiated in §§ 7-7-401 and 7-5-804, and Ark. Const. art. 5, §§ 3 and 4. Willis v. Crumbly, 368 Ark. 5, 242 S.W.3d 600 (2006).

§ 5. Regular and fiscal sessions.

(a) The General Assembly shall meet at the seat of government every year.

(b) The General Assembly shall meet in regular session on the second Monday in January of each odd-numbered year to consider any bill or resolution. The General Assembly may alter the time at which the regular session begins.

(c)(1) Beginning in 2010, the General Assembly shall meet in fiscal session on the second Monday in February of each even-numbered year

to consider only appropriation bills. The General Assembly may alter the time at which the fiscal session begins.

(2) A bill other than an appropriation bill may be considered in a fiscal session if two-thirds (⅔) of the members of each house of the General Assembly approve consideration of the bill.

(d) The General Assembly, by a vote of two-thirds (⅔) of the members elected to each house of the General Assembly, may alter the dates of the regular session and fiscal session so that regular sessions occur in even numbered years and the fiscal sessions occur in odd-numbered years. [As amended by Const. Amend. 86.]

A.C.R.C. Notes. Acts 2007, H.J.R. 1004, § 8, provided: "Nothing in this amendment shall be construed to alter the Governor's authority to call a special session of the General Assembly."

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by H.J.R. 1004 (now Amend. 86) during the 2007 Regular Session and adopted at the November 2008 general election by a vote of 664,671 for and 292,436 against.

Prior to amendment, this section read:

"§ 5. Time of meeting.

"The General Assembly shall meet at the seat of government every two years, on the first Tuesday after the second Monday in November, until said time be altered by law."

§ 9. Persons convicted ineligible.

CASE NOTES

Analysis

Determination of Eligibility.
"Infamous Crime."
Removal from Office.

Determination of Eligibility.

Fact that the mayor was reelected after criminal charges were filed against him was irrelevant; the mayor's convictions of infamous crimes disqualified him from holding public office and it was not a disqualification that could be overcome by the will of the electorate. State v. Oldner, 361 Ark. 316, 206 S.W.3d 818 (2005).

"Infamous Crime."

Arkansas case law has recognized that an "infamous crime" is a distinct entity and has never considered it to be synonymous with the term felony or required a punishment that exceeds imprisonment of one year; there is no support that the drafters of Ark. Const. art. 5, § 9, which deals with removal of an elected official from office, intended the term to be so narrowly construed, particularly in light of the fact that it is preceded by crimes specifically implicating elements of dishonesty or untruthfulness. State v. Oldner, 361 Ark. 316, 206 S.W.3d 818 (2005).

Mayor was properly barred from being a candidate for re-election because the mayor was convicted of the theft of three campaign signs over a year earlier; the misdemeanor theft was a crime of dishonesty and was an infamous crime in the context of this section, which barred those convicted of such crimes from holding public office. Edwards v. Campbell, 2010 Ark. 398, — S.W.3d — (2010).

Removal from Office.

Judge's discretion to control a docket is not completely obviated by § 16-106-101(c); therefore, state's petition for a writ of mandamus was denied where the state was seeking to remove a mayor from office because the trial judge had the discretion to control the docket, and the judge was not required to postpone other cases where the state was not a party in order to accommodate the state. State v. Vittitow, 358 Ark. 98, 186 S.W.3d 237 (2004).

Where the mayor was convicted of abuse of office for using city funds to pave a parking lot on property owned by his family and witness tampering for requesting that two city employees fabricate testimony in order to cover up alleged wrong-

doing on his part, those crimes were of a type that directly impacted the mayor's moral integrity because they were crimes involving dishonesty and deceit; therefore, the mayor's convictions were "infamous crimes" and the trial court's order denying the state's petition to remove the mayor from office was reversed. State v. Oldner, 361 Ark. 316, 206 S.W.3d 818 (2005).

§ 10. Members ineligible to civil office.

CASE NOTES

Cited: Biedenharn v. Thicksten, 361 Ark. 438, 206 S.W.3d 837 (2005).

§ 17. Duration of sessions.

(a) A regular biennial session shall not exceed sixty (60) calendar days in duration, unless extended by a vote of two-thirds (⅔) of the members elected to each house of the General Assembly. The regular biennial session shall not exceed seventy five (75) calendar days in duration, unless extended by a vote of three-fourths (¾) of the members elected to each house of the General Assembly.

(b) A fiscal session shall not exceed thirty (30) calendar days in duration, except that by a vote of three-fourths (¾) of the members elected to each house of the General Assembly a fiscal session may be extended one (1) time by no more than fifteen (15) calendar days.

(c) Provided, that this section shall not apply when impeachments are pending. [As amended by Const. Amend. 86.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by H.J.R. 1004 (now Amend. 86) during the 2007 Regular Session and adopted at the November 2008 general election by a vote of 664,671 for and 292,436 against.

Prior to amendment, this section read: "The regular biennial sessions, shall not exceed sixty days in duration; unless by a vote of two-thirds of the members elected to each house of said General Assembly. Provided, that this section shall not apply to the first session of the General Assembly under this Constitution, or when impeachments are pending."

§ 20. State not made defendant.

CASE NOTES

Analysis

Actions Proper.
—Claims Against State.
—School Districts.
—State Officers.
—Taxpayer Actions.
Improper Actions.
—Civil Rights.
—State Agencies.
Interlocutory Appeal.

Actions Proper.

Order requiring the Department of Health and Human Services to pay for an attorney for a child in its custody who had been accused of sexual misconduct was upheld where the Arkansas General Assembly clearly intended to waive sovereign immunity in a situation where assistance was needed to pay for an attorney to represent a child who was in the custody of the department in an unrelated adjudi-

cation hearing. Ark. HHS v. C.M., 100 Ark. App. 414, 269 S.W.3d 387 (2007).

—Claims Against State.

In a suit brought by a limited liability corporation against the Arkansas Department of Correction (ADC), a trial court did not err in granting ADC's motion of judgment on the pleadings because the suit implicated sovereign immunity to which no exception applied and which the state did not waive by making an appearance. Landsnpulaski, LLC v. Ark. Dep't of Corr., 372 Ark. 40, 269 S.W.3d 793 (2007).

—School Districts.

Arkansas case law holding that school districts are not arms of the state government is still good law; §§ 6-13-101 and 6-13-102 show the general assembly's intent that school districts are bodies corporate and are not entitled to assert sovereign immunity. Crenshaw v. Eudora Sch. Dist., 362 Ark. 288, 208 S.W.3d 206 (2005).

—State Officers.

Police officers brought suit against state, asking for a writ of mandamus and declaratory judgment with respect to funding the Arkansas State Police Retirement System. The class action suit was not barred by sovereign immunity because § 24-6-205 specifically provided for a waiver of immunity when an error was made in payment calculations. Weiss v. McLemore, 371 Ark. 538, 268 S.W.3d 897 (2007).

—Taxpayer Actions.

Where corporation, in its complaint, sought to enforce its rights as a taxpayer under the Bad Debt Statute, § 26-18-406, the case was a suit to compel a refund under a statute that provided for a refund; thus, by providing the remedy of a refund under the proper circumstances, the state waived sovereign immunity and there was no merit to the Department of Finance and Administration's argument that sovereign immunity barred the action. Weiss v. Am. Honda Fin. Corp., 360 Ark. 208, 200 S.W.3d 381 (2004).

While this section generally prohibits suits against the state or a state agency, the illegal exaction clause of Ark. Const. art. 16, § 13, as the more specific provision, controls over the more general prohibition against suits provided in this section and grants taxpayers the right to sue; therefore, taxpayers successfully pled an illegal exaction claim and the doctrine of sovereign immunity was not applicable. McGhee v. Ark. State Bd. of Collection Agencies, 360 Ark. 363, 201 S.W.3d 375 (2005).

Improper Actions.

Medical malpractice claim against the University of Arkansas for Medical Sciences (UAMS) was dismissed, pursuant to an interlocutory appeal, because, as a department of the University of Arkansas, the UAMS was not an entity that could be sued; the doctrine of sovereign immunity barred a claim against the University of Arkansas and its Board of Trustees because a finding for the patient against the UAMS would necessarily subject the State of Arkansas to financial liability, and sovereign immunity barred such an action unless it had been waived. Univ. of Ark. for Med. Scis. v. Adams, 354 Ark. 21, 117 S.W.3d 588 (2003).

State trooper was immune in his individual capacity under § 19-10-305(a) due to the non-malicious nature of the actions involved; the trooper contended that he was merely conducting a pat-down on a passenger in a car after the driver was arrested for an outstanding warrant. The complaint contained mere allegations of maliciousness and sexual intent. Simons v. Marshall, 369 Ark. 447, 255 S.W.3d 838 (2007).

In a civil rights action against a state trooper, a trial court erred by denying the trooper's motion to dismiss because he was immune from liability under Ark. Const. art. 5, § 20 in his official capacity since there was no waiver of sovereign immunity under §16-123-104; the action was tantamount to one against the state itself. Simons v. Marshall, 369 Ark. 447, 255 S.W.3d 838 (2007).

Appellees' requests for injunctive relief made in their complaint and subsequent amended complaints clearly sought to seek control of the actions of the Arkansas Department of Environmental Quality (ADEQ); appellees' suit was barred by the sovereign-immunity doctrine because it had not been waived by § 25-15-214; because specific procedures were provided for elsewhere, the Arkansas Administrative Procedures Act did not apply to the ADEQ. Ark. Dep't of Envtl. Quality v. Al-Madhoun, 374 Ark. 28, 285 S.W.3d 654 (2008).

Commission was entitled to summary judgment in an owner's suit to establish a road across the commission's land because the proposed easement would have divested the state, via the commission, of the sole right to occupy the property at issue; Ark. Const. Art. 7, § 28, by itself, did not grant eminent domain power to county court to establish roads. If the county court could not have exercised the power of eminent domain to establish roads to access landlocked parcels under the constitution without the implementing legislation of §§ 27-66-401 to -404, then it could not have been said that Ark. Const. Art. 7, § 28 alone was sufficient to overcome the state's sovereign immunity. Ark. Game & Fish Comm'n v. Eddings, 2011 Ark. 47, — S.W.3d — (2011).

—Civil Rights.

Claims against appellees in their official capacities were barred by the Sovereign Immunity Clause of the Arkansas Constitution where (i) individual appellees listed as defendants were all employees of the state and, as such, the claims against them in their official capacities were the same as an action against the state, and (ii) plaintiff's complaint against appellees also specifically requested money damages from each individual named, meaning that the lawsuit implicated the state's financial resources. Hanks v. Sneed, 366 Ark. 371, 235 S.W.3d 883 (2006).

—State Agencies.

Constable's suit against Arkansas Crime Information Center (ACIC) was barred under doctrine of sovereign immunity because § 12-12-201 et seq. did not require a law enforcement officer to be provided with a specific type of access to information, such as via radio transmission; the constable had no clear and legal right to transmit information to, and receive information from, the ACIC system in the most rapid manner available. Clowers v. Lassiter, 363 Ark. 241, 213 S.W.3d 6 (2005).

Interlocutory Appeal.

In a civil rights action against a state trooper, there was a proper interlocutory appeal under Ark. R. App. P. Civ. 2(a)(2) after the denial of a motion to dismiss because immunity was asserted under Ark. Const. art. 5, § 20. Simons v. Marshall, 369 Ark. 447, 255 S.W.3d 838 (2007).

§ 25. Special laws — Suspension of general laws.

RESEARCH REFERENCES

Ark. L. Rev. The New Judicial Federalism Takes Root in Arkansas, 58 Ark. L. Rev. 883.

§ 29. Appropriations.

No money shall be drawn from the treasury except in pursuance of specific appropriation made by law, the purpose of which shall be distinctly stated in the bill, and the maximum amount which may be drawn shall be specified in dollars and cents; and no appropriations made by the General Assembly after December 31, 2008, shall be for a longer period than one (1) fiscal year. [As amended by Const. Amend. 86.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by H.J.R. 1004 (now Amend. 86) during the 2007 Regular Session and adopted at the November 2008 general election by a vote of 664,671 for and 292,436 against.

Amendments. The 2007 amendment inserted "made by the General Assembly after December 31, 2008" and substituted "one (1) fiscal year" for "two years" at the end of the section.

CASE NOTES

Constitutionality.

Even if the Supreme Court of Arkansas were to look to an act's emergency clause for its distinct purpose, boilerplate language in an emergency clause that says that the appropriation is "essential to the operation of the agency" is too broad and vague to meet the test of distinctly explaining "how" the money is to be spent. Wilson v. Weiss, 370 Ark. 205, 258 S.W.3d 351 (2007).

Certain acts of the General Assembly violated this section by not including a "distinct purpose" that stated the purpose of each act; the Supreme Court of Arkansas held that the mere statement in the acts that the challenged acts were to be used for "state assistance" or "state aid" did not explain "how" the funds would be used and the circuit court's rulings that the acts were constitutional were reversed. Wilson v. Weiss, 370 Ark. 205, 258 S.W.3d 351 (2007).

§ 30. General and special appropriations.

CASE NOTES

Cited: White v. Ark. Capital Corporation/Diamond State Ventures, 365 Ark. 200, 226 S.W.3d 825 (2006).

§ 32. Workmen's Compensation Laws — Actions for personal injuries.

RESEARCH REFERENCES

Ark. L. Rev. Flavio Rios Guerrero v. OK Foods, Inc.: Advocating for a Broader Intentional-Tort Exception to the Workers' Compensation Exclusive-Remedy Doctrine, 61 Ark. L. Rev. 133.

CASE NOTES

Analysis

Collateral Source Rule.
Exclusive Remedy.

Collateral Source Rule.

Court granted plaintiff's motion challenging the Arkansas Civil Justice Reform Act of 2003, § 16-55-212(b), and allowed plaintiff to introduce evidence of the amounts billed to her for medical services necessitated by the injuries that were the subject of her lawsuit, regardless of any discount that she had received on those amounts because (1) if the Arkansas Supreme Court were considering the constitutionality of § 16-55-212(b), it would hold that § 16-55-212(b) infringed on its constitutional prerogative to prescribe rules of evidence under Ark. Const., Amend. 80, § 3, and was, therefore, unconstitutional because § 16-55-212(b) would, if enforced, work a reversal of the collateral source rule that had been recognized and approved by the Arkansas Supreme Court, yet the Arkansas Supreme Court did not "prescribe" § 16-55-212(b), and (2) the Arkansas Supreme Court would, if presented with the instant motion, find that § 16-55-212(b) violated this section as the Arkansas Supreme Court had held that a personal injury plaintiff was entitled, assuming a successful showing of liability, to recover the payments made (or written off) on her behalf by a collateral source, but § 16-55-212(b) would prevent her from doing that. Burns v. Ford Motor Co., 549 F. Supp. 2d 1081 (W.D. Ark. 2008).

Exclusive Remedy.

Arkansas Workers' Compensation § 11-9-101 et seq., including the exclusive-remedy provision of § 11-9-105(a), is made possible by Ark. Const. Amend. 26, which

amended this section; that amendment provides that the Arkansas general assembly has the power to enact legislation prescribing the amount of compensation employers are required to pay for injuries or deaths of employees. Honeysuckle v. Curtis H. Stout, Inc., 2010 Ark. 328, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 500 (Oct. 28, 2010).

Cited: Craven v. Fulton Sanitation Serv., 361 Ark. 390, 206 S.W.3d 842 (2005); Moses v. Hanna's Candle Co., 366 Ark. 233, 234 S.W.3d 872 (2006).

§ 34. Introduction of bills — Time limit.

No new bill shall be introduced into either house during the last three days of a regular or fiscal session. [As amended by Const. Amend. 86.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by H.J.R. 1004 (now Amend. 86) during the 2007 Regular Session and adopted at the November 2008 general election by a vote of 664,671 for and 292,436 against.

Amendments. The 2007 amendment substituted "a regular or fiscal" for "the" near the end of the section.

[§ 39.] State expenses — Limitation — Exceptions.

§ 3. Excepting monies raised or collected for educational purposes, highway purposes, to pay Confederate pensions and the just debts of the State, the General Assembly is hereby prohibited from appropriating or expending more than the sum of Two and One-Half Million Dollars for all purposes, for any fiscal year; provided the limit herein fixed may be exceeded by the votes of three-fourths of the members elected to each House of the General Assembly. [As added to Art. 5 by Const. Amend. 19; as amended by Const. Amend. 86.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by H.J.R. 1004 (now Amend. 86) during the 2007 Regular Session and adopted at the November 2008 general election by a vote of 664,671 for and 292,436 against.

Amendments. The 2007 amendment substituted "fiscal year" for "biennial period."

[§ 40.] General appropriation bill — Enactment.

§ 4. In making appropriations for any fiscal year, the General Assembly shall first pass the General Appropriation Bill provided for in Section 30 of Article 5 of the Constitution, and no other appropriation bill may be enacted before that shall have been done. [As added to Art. 5 by Const. Amend. 19; as amended by Const. Amend. 86.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by H.J.R. 1004 (now Amend. 86) during the 2007 Regular Session and adopted at the November 2008 general election by a vote of 664,671 for and 292,436 against.

Amendments. The 2007 amendment substituted "fiscal year" for "biennial period" near the beginning of the section.

ARTICLE 7

Judicial Department

SECTION.
43. [Repealed.]

§§ 20 — 22. [Repealed.]

CASE NOTES

Bias Not Shown.

Trial judge did not err in denying defendant's motion to recuse on the ground that the judge knew his fiancee's parents because there was nothing to indicate that the trial judge displayed prejudice or bias toward defendant; the negative feelings toward defendant by his fiancee's parents were not imputed to the trial judge. Rudd v. State, 2010 Ark. App. 784, — S.W.3d — (2010).

§ 26. Punishment of indirect contempt provided for by law.

CASE NOTES

Inherent Power of Court.

Sixty-day sentence for contempt based on a failure to pay child support was allowable, despite the lack of statutory authority under § 5-4-201(b)(3), because the will of the Arkansas General Assembly was not a limitation upon the power of the trial court to inflict a reasonable punishment for disobedience. Norman v. Cooper, 101 Ark. App. 446, 278 S.W.3d 569 (2008).

Permanent restraining order, which authorized law-enforcement officers to arrest and incarcerate a mother for actions far beyond the statutory offense of interference with visitation, under § 5-26-501, was an impermissible delegation of the circuit court's judicial power, under this section, to enforce its orders by finding the mother in contempt, under § 16-10-108. Brock v. Eubanks, 102 Ark. App. 165, 288 S.W.3d 272 (2008).

§ 28. County courts — Jurisdiction — Single judge holding court.

CASE NOTES

Analysis

Eminent Domain.
Jurisdiction.

Eminent Domain.

Commission was entitled to summary judgment in an owner's suit to establish a road across the commission's land because the proposed easement would have divested the state, via the commission, of the sole right to occupy the property at issue; this section, by itself, did not grant eminent domain power to county court to establish roads. If the county court could not have exercised the power of eminent domain to establish roads to access landlocked parcels under the constitution without the implementing legislation of §§ 27-66-401 to 404, then it could not have been said that this section alone was sufficient to overcome the state's sovereign immunity. Ark. Game & Fish Comm'n v. Eddings, 2011 Ark. 47, — S.W.3d — (2011).

Jurisdiction.

County courts lack subject-matter jurisdiction over claims of violation of the federal constitution and any judgment in that regard is null and void; jurisdiction of

a county court is limited to those subjects set forth in this section. Villines v. Harris, 362 Ark. 393, 208 S.W.3d 763 (2005).

Circuit court was without jurisdiction and the claim against the county, tax assessor, city, and school district should have been filed in county court, pursuant to this section, because the taxpayers alleged that an erroneous assessment occurred for which they sought a refund of property taxes. Muldoon v. Martin, 103 Ark. App. 64, 286 S.W.3d 201 (2008).

§ 29. County judge — Election — Term — Qualifications.

RESEARCH REFERENCES

ALR. Validity, construction, and operation of constitutional and statutory "term limits" provisions. 112 A.L.R.5th 1.

§ 33. Appeals from county and common pleas courts.

CASE NOTES

Cited: Robinson v. Villines, 2009 Ark. 632, — S.W.3d — (2009).

§ 41. Qualifications of justice of peace.

RESEARCH REFERENCES

ALR. Validity, construction, and operation of constitutional and statutory "term limits" provisions. 112 A.L.R.5th 1.

§ 43. [Repealed.]

Publisher's Notes. Sections 1-18, 20-22, 24, 25, 32, 34, (as amended by Ark. Const. Amend. 24, § 1), 35 (as amended by Ark. Const. Amend. 24, § 2), 39, 40, 42, 44, 45 and 50 of Ark. Const., Art. 7, were repealed by Ark. Const. Amend. 80, § 22, effective July 1, 2001. Ark. Const., Art. 7, § 43, was repealed effective January 1, 2005. Ark. Const. Amend. 58, § 1, was repealed by Ark. Const. Amend. 80, § 22(c), effective July 1, 2001. Ark. Const. Amend. 64, § 1, is repealed effective January 1, 2005. Ark. Const. Amend. 77, § 1, was repealed effective July 1, 2001.

§ 47. Constables — Term of office — Certificate of election.

RESEARCH REFERENCES

U. Ark. Little Rock. L. Rev. Article, If the Constable Blunders, Does the County Pay?: Liability Under Title 42 U.S.C. § 1983, 28 U. Ark. Little Rock L. Rev. 519.

§ 49. Style of process and of indictments.

CASE NOTES

Insufficiency.

Because a plaintiff's summons ran in his name, rather than the State of Arkansas, it failed to meet the requirements of Ark. R. Civ. P. 4(b), which necessarily incorporated this section, and it was, therefore, not a valid summons. Plaintiff had no authority to direct the summons to defendant, and thus, the circuit court properly dismissed the complaint for failure to serve a valid summons on appellee. Gatson v. Billings, 2011 Ark. 125, — S.W.3d — (2011).

ARTICLE 8

Apportionment — Membership in General Assembly

§ 4. Duties of Board of Apportionment.

RESEARCH REFERENCES

ALR. Application of constitutional "compactness requirement" to redistricting. 114 A.L.R.5th 311.

State court jurisdiction over congressional redistricting disputes. 114 A.L.R.5th 387.

ARTICLE 9

Exemption

§ 1. Personal property exemptions of persons not heads of families.

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Common-law Exemptions, 2005 Arkansas L. Notes 65.

§ 2. Heads of families — Exempt personal property.

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Common-law Exemptions, 2005 Arkansas L. Notes 65.

§ 3. Homestead exemption from legal process — Exceptions.

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Common-law Exemptions, 2005 Arkansas L. Notes 65.

Ark. L. Rev. Note: Middleton v. Lockhart: Rule 41(b), a Fraudulent Transfer, a Homestead, and a Homicide — Did This Hard Case Make Bad Law?, 56 Ark. L. Rev. 113.

Mobile Homesteads, and in Particular the Exempt Status of Mobile Homes Located on Rented Lots: The Laws of Arkan-

sas, Mississippi, Nebraska, and Utah Compared and the Principle of the Liberal Construction of Exemption Statutes Analyzed, 57 Ark. L. Rev. 221.

CASE NOTES

Analysis

Abandonment.
Bankruptcy.
Creditors' Rights.
Head of a Family.
Proof.

Abandonment.

Res judicata did not apply to bar a homestead issue as it was not fully and fairly litigated previously; trial court properly found that a homestead exemption applied to bar attachment of judgment liens because (1) once acquired, the right did not terminate by divorce, (2) an agreement to sell the home during the divorce proceeding was not determinative, (3) the homestead exemption could have been raised even though the property was conveyed, and (4) the judgment creditors failed to show an intent to abandon the homestead. Parker v. Johnson, 95 Ark. App. 213, 236 S.W.3d 1 (2006), superseded, 368 Ark. 190, 244 S.W.3d 1 (2006).

Bankruptcy.

Debtor met the requirements to qualify for a homestead exemption under this section, where she was head of a household and, although she stated that she did not consider the property as her home, she held a legal interest in the property, she resided on the property, and was a resident of Arkansas at the time that her bankruptcy petition was filed. In re Warnock, 323 B.R. 249 (Bankr. W.D. Ark. 2005).

After a debtor claimed a homestead exemption under Ark. Const. art. 9, §§ 3 and 4 and the trustee did not object pursuant to Fed. R. Bankr. P. 4003(b), the court refused to allow the trustee to disguise a belated objection to the exemption as a proposed plan modification or as a response to the debtor's motion for a refund of the proceeds of sale of the homestead. In re Tyson, 359 B.R. 239 (Bankr. E.D. Ark. 2007).

Creditors' Rights.

Homestead exemption under § 16-66-210(c)(1) extended to only 80 of defendant's 120 acres of real property, and defendant and his wife could claim only a single homestead exemption. Defendant therefore had 40 acres of non-homestead property that could have been sold to pay legal fees, and reimbursement was required for legal services provided under the Criminal Justice Act, 18 U.S.C.S. § 3006A. United States v. Fincher, 593 F.3d 702 (8th Cir. 2010).

Head of a Family.

Debtor was entitled to claim a homestead exemption under 11 U.S.C.S. § 522(b)(2)(A) because she met the elements of head of household under this section, and § 16-66-210 where (1) although she might not have been legally obligated to support her mother, debtor undertook the obligation, (2) her mother was partially dependent upon the debtor for basic financial needs, and (3) because of the mother's medical condition, the debtor had assumed the decision-making role with regards to household affairs. In re Warnock, 323 B.R. 249 (Bankr. W.D. Ark. 2005).

Where an unmarried bankruptcy debtor lived with his non-dependent sibling, the debtor nonetheless qualified as head of household for purposes of a homestead exemption since his dependent parent lived with him prior to the parent's death and there was no showing that the homestead was terminated; it was irrelevant that the parent was only partially dependent upon debtor, that debtor might not have been legally obligated to support the parent, and that the parent died prior to debtor's bankruptcy. In re Morris, 340 B.R. 78 (Bankr. W.D. Ark. 2006).

Unmarried debtor was entitled to claim property as her homestead under 11 U.S.C.S. § 522(b)(3)(A) because she qualified as head of a family under this section as of the date she filed her petition where (1) although she was not legally obligated to support her brothers, she was morally obligated to support them; (2) her brothers were partially dependent on her; and (3) she had authority over her brothers while they lived in her home, as one brother conceded her authority, while the other gave her his disability check so that

she could pay his bills, and she made sure he took his medicine. In re Purvis, 427 B.R. 6 (Bankr. W.D. Ark. 2010).

Proof.

Bankruptcy court properly denied the homestead advisement of debtor's wife and her motion to strike trustee's motion for turnover of the property as the wife's inchoate right of dower in the property did not support a homestead claim and she presented no evidence of ownership other than a co-signed mortgage. In re Griffin, — F. Supp.2d —, 2006 U.S. Dist. LEXIS 47387 (W.D. Ark. July 12, 2006).

§ 4. Rural homestead — Acreage — Value.

RESEARCH REFERENCES

Ark. L. Rev. Mobile Homesteads, and in Particular the Exempt Status of Mobile Homes Located on Rented Lots: The Laws of Arkansas, Mississippi, Nebraska, and Utah Compared and the Principle of the Liberal Construction of Exemption Statutes Analyzed, 57 Ark. L. Rev. 221 (2004).

CASE NOTES

Bankruptcy Proceedings.

After a debtor claimed a homestead exemption under Ark. Const. art. 9, §§ 3 and 4 and the trustee did not object pursuant to Fed. R. Bankr. P. 4003(b), the court refused to allow the trustee to disguise a belated objection to the exemption as a proposed plan modification or as a response to the debtor's motion for a refund of the proceeds of sale of the homestead. In re Tyson, 359 B.R. 239 (Bankr. E.D. Ark. 2007).

§ 5. Urban homestead — Acreage — Value.

RESEARCH REFERENCES

Ark. L. Rev. Mobile Homesteads, and in Particular the Exempt Status of Mobile Homes Located on Rented Lots: The Laws of Arkansas, Mississippi, Nebraska, and Utah Compared and the Principle of the Liberal Construction of Exemption Statutes Analyzed, 57 Ark. L. Rev. 221.

ARTICLE 11

Militia

§ 4. Authority to call out volunteers or militia.

CASE NOTES

In General.

Section 12-61-115(a) left the decision as to whether to issue a proclamation of a state of insurrection or emergency to the discretion of the Governor of Arkansas; however, the lack of such a proclamation did not mean that the National Guard's involvement in counterdrug surveillance was unlawful, particularly since the Governor had certified that the counterdrug plan complied with Arkansas law. United States v. Boyster, 436 F.3d 986 (8th Cir. 2006).

ARTICLE 12

Municipal and Private Corporations

§ 4. Limitation on legislative and taxing power — Local bond issues.

CASE NOTES

Analysis

Claims in Excess of Revenues.
Local Legislative Authority.
—Contrary to State Laws.

Claims in Excess of Revenues.

Where a city's multi-year agreement with a union actually boiled down to a series of yearly contracts with a health insurance provider that could not exceed annual city revenues, the city did not violate this section by entering into a multi-year agreement with the union. AFSCME, Local 2957 v. City of Benton, 513 F.3d 874 (8th Cir. 2008).

Local Legislative Authority.

Because West Helena, Ark., Ordinance 4B was in direct conflict with § 24-12-123 and could not override the requirements of that section pursuant to the terms of this section, a former mayor was not currently entitled to retirement benefits under Ordinance 4B. Municipality of Helena-West Helena v. Weaver, 374 Ark. 109, 286 S.W.3d 132 (2008).

—Contrary to State Laws.

In a case involving a rock quarry that was located entirely outside, but within one mile of, the corporate limits of a city in which a district court issued a preliminary injunction enjoining Fayetteville, Ark. Ordinance No. 5280 prior to its enforcement date, city argued that the company that operated the quarry was unlikely to succeed on the merits of its claim that the city authority to license and regulate its quarry, because the ordinance was enacted pursuant to § 14-54-103(1). Contrary to the city's argument, since the quarry was located outside the corporate city limits but within one mile of those limits, the city could not regulate the quarry without a judicial determination that its activities constituted a nuisance, and no such judicial determination had been made; the quarry was not a nuisance per se. Rogers Group, Inc. v. City of Fayetteville, 629 F.3d 784 (8th Cir. 2010).

Cited: Brock v. Townsell, 2009 Ark. 224, 309 S.W.3d 179 (2009).

§ 5. Political subdivisions not to become stockholders in or lend credit to private corporations.

CASE NOTES

Facilities Boards.

City of Searcy, Arkansas, did not violate the First Amendment to the U.S. Constitution, Ark. Const., Amend. 65, or this section when it created a housing facilities board under the Arkansas Public Facilities Board Act (PFBA), § 14-137-101 et seq., and issued bonds so a university that was associated with the Churches of Christ could fund building projects. The PFBA allowed the housing facilities board to issue bonds to finance projects that had a public purpose, education was a public purpose, and neither the city nor the board acted with the purpose of advancing or inhibiting religion. Gillam v. Harding Univ., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 53609 (E.D. Ark. June 24, 2009).

§ 6. General incorporation laws — Charters — Revocation.

CASE NOTES

Financial Institutions.

Elimination of cumulative voting under § 23-48-320 for bank holding companies did not unconstitutionally deprive shareholders of the vested right to cumulative voting because Ark. Const. art. 12, § 6 permits the Arkansas General Assembly to repeal, amend, or alter corporate laws at any time. Bennett v. Lonoke Bancshares, Inc., 356 Ark. 371, 155 S.W.3d 15 (2004).

§ 7. State not to be stockholder.

CASE NOTES

Cited: White v. Ark. Capital Corporation/Diamond State Ventures, 365 Ark. 200, 226 S.W.3d 825 (2006).

§ 9. Taking of property by corporation — Compensation.

RESEARCH REFERENCES

ALR. State or local governmental body's action or inaction, in provision of public utility services, benefiting private company as constituting gift of money, or pledge of credit, to private party in violation of state constitutional provision. 122 A.L.R.5th 337.

ARTICLE 14

Education

§ 1. Free school system.

RESEARCH REFERENCES

ALR. Validity of public school funding systems. 110 A.L.R.5th 293.

Ark. L. Rev. Lessons From Lake View: Some Questions and Answers from Lake View School District No. 25 v. Huckabee, 56 Ark. L. Rev. 519.

The New Judicial Federalism Takes Root in Arkansas, 58 Ark. L. Rev. 883.

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Constitutional Law, 25 U. Ark. Little Rock L. Rev. 908.

Note, Constitutional Law — Education and Equal Protection — Towards Intelligence and Virtue: Arkansas Embarks on a Court-Mandated Search for an Adequate and Equitable School Funding System. Lake View School District No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002), 26 U. Ark. Little Rock L. Rev. 143.

Funding the Education of Arkansas's Children: A Summary of the Problems and Challenges, 27 U. Ark. Little Rock L. Rev. 1.

Funding the Education of Arkansas's Children: A Summary of the Problems and Challenges, 27 U. Ark. Little Rock L. Rev. 69.

CASE NOTES

Analysis

In General.
Early-Childhood Programs.
State Funding.

In General.

Court released jurisdiction of this case where compliance with the mandate to provide adequate and substantially equal education for students in all Arkansas school districts was already well underway; an adequate educational opportunity does not mean that if certain school districts provide more than an adequate education, all school districts must provide more than an adequate education with identical curricula, facilities, and equipment. Lake View Sch. Dist. No. 25 v. Huckabee, 358 Ark. 137, 189 S.W.3d 1 (2004).

Early-Childhood Programs.

Early-childhood education, apart from legislative enactment, was not mandated by Ark. Const. art. 14, § 1; the General Assembly alone provided what early-childhood education programs would be implemented. Lake View Sch. Dist. No. 25 v. Huckabee, 364 Ark. 398, 220 S.W.3d 645 (2005).

State Funding.

Arkansas Supreme Court had the duty under Ark. Const. art. 14, § 1 to assure that the state provided a general, suitable, and efficient system of public education to the children of Arkansas; thus, where public school funding system continued to be inadequate and schools operated under constitutional infirmity which had to be corrected, the Court stayed the issuance of the mandate to allow the necessary time to correct constitutional deficiencies. Lake View Sch. Dist. No. 25 v. Huckabee, 364 Ark. 398, 220 S.W.3d 645 (2005).

§ 2. School fund — Use — Purposes.

RESEARCH REFERENCES

ALR. Procedural issues concerning public school funding cases. 115 A.L.R.5th 563.

CASE NOTES

Payment of Superintendent.

Taxpayers made no argument that the school board violated any statutory provision regarding school expenditures where, without question, the payment of a salary and benefits to a superintendent was both immediately and directly connected with the establishment and maintenance of a common school system and absolutely necessary for the maintenance and operation of schools; the school board, while operating and maintaining the school district's schools, determined that the school district could be operated and maintained in a better manner by a different superintendent. Gray v. Mitchell, 373 Ark. 560, 285 S.W.3d 222 (2008).

§ 3. School tax — Budget — Approval of tax rate (Const., Art. 14, § 3, as amended by Const. Amend. 11, Const. Amend. 40, amended, and Const. Amend. 74).

RESEARCH REFERENCES

ALR. Procedural issues concerning public school funding cases. 115 A.L.R.5th 563.

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Constitutional Law, 25 U. Ark. Little Rock L. Rev. 908.

Funding the Education of Arkansas's Children: A Summary of the Problems and Challenges, 27 U. Ark. Little Rock L. Rev. 1.

School Finance Litigation and Adequacy Studies, 27 U. Ark. Little Rock L. Rev. 69.

CASE NOTES

Analysis

Applicability.
Funding Variances.
Funds.

Applicability.

Taxpayers made no argument that the school board violated any statutory provision regarding school expenditures where, without question, the payment of a salary and benefits to a superintendent was both immediately and directly connected with the establishment and maintenance of a common school system and absolutely necessary for the maintenance and operation of schools; the school board, while operating and maintaining the school district's schools, determined that the school district could be operated and maintained in a better manner by a different superintendent. Gray v. Mitchell, 373 Ark. 560, 285 S.W.3d 222 (2008).

Funding Variances.

An adequate educational opportunity does not mean identical, and Ark. Const. Amend. 74 allows for variances in school district revenues above the base millage rate of 25 mills, which may lead to enhanced curricula, facilities, and equipment which are superior to what is deemed to be adequate by the state; nevertheless, the overarching constitutional principle is that an adequate education must be provided to all school children on a substantially equal basis with regard to curricula, facilities, and equipment. Lake View Sch. Dist. No. 25 v. Huckabee, 358 Ark. 137, 189 S.W.3d 1 (2004).

Funds.

Summary judgment was properly awarded to the Arkansas Governor and state officials in an action claiming that they retained and unlawfully diverted funds derived from property taxes and allocated to the Arkansas Educational Excellence Trust Fund because Amendment 74 to the Arkansas Constitution did not place any limits on the Arkansas General Assembly as to how it appropriated money in excess of that generated by Amendment 74. Fort Smith Sch. Dist. v. Beebe, 2009 Ark. 333, 322 S.W.3d 1 (2009).

Cited: Beebe v. Fountain Lake Sch. Dist., 365 Ark. 536, 231 S.W.3d 628 (2006).

§ 4. Supervision of schools.

CASE NOTES

Cited: Price v. Thomas Built Buses, 370 Ark. 405, 260 S.W.3d 300 (2007).

ARTICLE 16

Finance and Taxation

§ 3. Making profit out of or misusing public funds — Penalty.

CASE NOTES

Cited: Biedenharn v. Thicksten, 361 Ark. 438, 206 S.W.3d 837 (2005).

§ 5. Property taxed according to value — Procedures for valuation — Tax exemptions.

RESEARCH REFERENCES

ALR. When is property owned by state or local governmental body put to public use so as to be eligible for property tax exemption. 114 A.L.R.5th 561.

State or local governmental body's action or inaction, in provision of public utility services, benefiting private company as constituting gift of money, or pledge of credit, to private party in violation of state constitutional provision. 122 A.L.R.5th 337.

CASE NOTES

Property.

Taxpayer challenged a county's reappraisal of property for ad valorem tax purposes, but the taxpayer never challenged the legality of 1955 Ark. Acts 153, although the taxpayer's arguments effectively alleged that the county's reassessment and collection scheme was an unconstitutional violation of Ark. Const., Amend. 59. Ad valorem taxes were legal in Arkansas, and the trial court lacked subject-matter jurisdiction over the matter. Hambay v. Williams, 373 Ark. 532, 285 S.W.3d 239 (2008).

§ 6. Other tax exemptions forbidden.

RESEARCH REFERENCES

ALR. When is property owned by state or local governmental body put to public use so as to be eligible for property tax exemption. 114 A.L.R.5th 561.

§ 11. Levy and appropriation of taxes.

CASE NOTES

School Funds.

In a City's challenge to the County Assessor's allocation of millage rates, the Assessor was incorrect to allocate more mills to a school district for purposes of the tax-increment financing formula than were passed by the voters because to do so would have violated Ark. Const. art. XVI, § 11. City of Fayetteville v. Wash. County, 369 Ark. 455, 255 S.W.3d 844 (2007).

§ 13. Illegal exactions.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. McCorkle, Constitutional Law — Arkansas' Nondelegation Doctrine: The Arkansas Supreme Court Defines a Limit on the Delegation of Legislative Authority to a Private Party, 23 U. Ark. Little Rock L. Rev. 297.

Annual Survey of Caselaw, Civil Procedure, 26 U. Ark. Little Rock L. Rev. 829.

CASE NOTES

Analysis

In General.
Class Actions.
Complaint.
Expenditure of Funds.
Jurisdiction.
Parties.
—Standing.

In General.

School district residents attempted to state a cause of action in illegal exaction and the circuit court erred in finding that they alleged a cause of action contesting the school district election, under § 6-14-116; the circuit court had to determine whether the residents had stated a cause of action in illegal exaction on remand. Dollarway Patrons for Better Sch. v. Dollarway Sch. Dist., 374 Ark. 92, 286 S.W.3d 123 (2008).

Class Actions.

Despite its erroneous finding that a taxpayer was an inadequate representative under this section, a circuit court did not err in dismissing a illegal-exaction claim as to taxpayers within 498 of the 499 municipalities participating in a defense program because those municipalities were not proper parties through Ark. R. Civ. P. 23.2. This section was self-executing and imposed no terms or conditions upon the right of a citizen to file suit to prevent an illegal exaction. Stromwall v. Van Hoose, 371 Ark. 267, 265 S.W.3d 93 (2007).

Complaint.

In customer's class action suit against a public service commission and several gas utilities challenging surcharges she paid as a result of an illegal policy implemented by the commission regarding low-income assistance, the trial court properly dismissed customer's claims as the relief she was seeking was a refund, which was within the jurisdiction of the commission to resolve under § 23-3-119(d); contrary to customer's assertion, the surcharges were not a tax but a mechanism by which the utilities could recover some of the bad debt incurred as a result of the implementation of the policy in question. Austin v. Centerpoint Energy Arkla, 365 Ark. 138, 226 S.W.3d 814 (2006).

Expenditure of Funds.

Municipality is authorized by § 14-54-101 to participate in an association for the promotion of the general welfare of the city and to join with other municipalities to purchase services, and the payment of fees to a legal defense program as a subset of the association is permissible. Therefore, summary judgment was properly granted in a case alleging an illegal exaction since there was no citation of authority for an argument that there was an illegal use of public funds relating to the payment of punitive damages in a settlement; moreover, the fees associated with the joining of a defense program were allowed under § 14-54-101. Stromwall v. Van Hoose, 371 Ark. 267, 265 S.W.3d 93 (2007).

Jurisdiction.

Giving a broad construction to the Tax Injunction Act's (TIA), 28 U.S.C.S. § 1341, use of "tax," access and hook-up fees for new installations of water and sewer services qualified as taxes for purposes of the TIA. Because homebuilders' action was to enjoin the assessment and collection of taxes, and because the homebuilders had a plain, speedy, and efficient remedy in the state courts via §§ 16-113-306 and 16-111-103, the TIA barred federal jurisdiction over the illegal exaction claims based on this section against a city, a utility, and a water and sewer commission, raised by the homebuilders. Northwest Ark. Home Builders Ass'n v. City of Rogers, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 19772 (W.D. Ark. Mar. 3, 2008).

Parties.

Taxpayer had standing as a taxpayer to pursue the relief authorized by Ark. Const. art. 16, § 13; the statute was self-executing, and it permitted taxpayers to challenge the legality of expenditures of public funds. Biedenharn v. Thicksten, 361 Ark. 438, 206 S.W.3d 837 (2005).

—Standing.

This section is self-executing and imposed no terms or conditions upon the right of the citizen to file suit to prevent an illegal exaction; thus, taxpayers had standing to bring their complaint where it was clearly alleged that all plaintiffs were Arkansas residents and taxpayers. McGhee v. Ark. State Bd. of Collection Agencies, 360 Ark. 363, 201 S.W.3d 375 (2005).

Taxpayer did not have standing to pursue an illegal exaction suit against the county and builders where the funds used to repair a building were not generated from tax dollars or otherwise arising from taxation as the county's payment of an insurance deductible was the exact amount owed under its insurance contract. Brewer v. Carter, 365 Ark. 531, 231 S.W.3d 707 (2006).

Cited: Weiss v. McFadden, 356 Ark. 123, 148 S.W.3d 248 (2004); Weiss v. McFadden, 360 Ark. 76, 199 S.W.3d 649 (2004); White v. Ark. Capital Corporation/Diamond State Ventures, 365 Ark. 200, 226 S.W.3d 825 (2006).

ARTICLE 19

Miscellaneous Provisions

SECTION.

§ 3. Elected or appointed officers — Qualifications of an elector required.

RESEARCH REFERENCES

ALR. Validity, construction, and operation of constitutional and statutory "term limits" provisions. 112 A.L.R.5th 1.

§ 13. [Repealed.]

Publisher's Notes. This amendment repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January 1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 (now Amend. 89) and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

Prior to amendment, this section read:

"§ 13. Maximum lawful rates of interest.

"(a) General Loans:

"(i) The maximum lawful rate of interest on any contract entered into after the effective date hereof shall not exceed five percent (5%) per annum above the Federal Reserve Discount Rate at the time of the contract.

"(ii) All such contracts having a rate of interest in excess of the maximum lawful rate shall be void as to the unpaid interest. A person who has paid interest in excess of the maximum lawful rate may recover, within the time provided by law, twice the amount of interest paid. It is unlawful for any person to knowingly charge a rate of interest in excess of the maximum lawful rate in effect at the time of the contract, and any person who does so shall be subject to such punishment as may be provided by law.

"(b) Consumer Loans and Credit Sales: All contracts for consumer loans and credit sales having a greater rate of interest than seventeen percent (17%) per annum shall be void as to principal and interest and the General Assembly shall prohibit the same by law.

"(c) Definitions: As used herein, the term:

"(i) "consumer loans and credit sales" means credit extended to a natural person in which the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.

"(ii) "Federal Reserve Discount Rate" means the Federal Reserve discount Rate on ninety-day commercial paper in effect in the Federal Reserve Bank in the Federal Reserve District in which Arkansas is located.

"(d) Miscellaneous:

"(i) The rate of interest for contracts in which no rate of interest is agreed upon shall be six percent (6%) per annum.

"(ii) The provisions hereof are not intended and shall not be deemed to supersede or otherwise invalidate any provisions of federal law applicable to loans or interest rates including loans secured by residential real property.

"(iii) The provisions hereof revoke all provisions of State law which establish

the maximum rate of interest chargeable in the State or which are otherwise inconsistent herewith."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. A Continuing History of Arkansas's Usury Law: On the Verge of Extinction?, 25 U. Ark. Little Rock L. Rev. 819.

Annual Survey of Caselaw: Tort Law, 27 U. Ark. Little Rock L. Rev. 759.

CASE NOTES

Analysis

Defenses.
Attorneys' Fees.
Check-Cashers Act.
Computation of Interest.
Deferred Presentment.
Intent.
Judgments.
Rate Determination.
Void Contracts.

Defenses.

In a legal malpractice case where a client asserted that an attorney failed to assert the defense of usury on the client's behalf in an underlying action involving a promissory note, summary judgment for the attorney and his law firm was appropriate because the attorney made a prima facie case for estoppel with regard to a usury defense and the client offered no proof that he did not select the interest rate or that the elements of estoppel were not met. Evans v. Hamby, 2011 Ark. 69, — S.W.3d — (2011).

Cited: Bailey v. Benton, 2011 Ark. App. 230, — S.W.3d — (2011).

Attorneys' Fees.

Trial court erred by denying attorneys' fees to a party that prevailed in an action where the loan at issue was determined to be usurious as, pursuant to § 4-57-108, a fee award was mandatory in that case. Smith v. Eisen, 97 Ark. App. 130, 245 S.W.3d 160 (2006).

Check-Cashers Act.

Where a lender violated Arkansas' usury laws, including subsection (a) of this section, the lender's surety became liable under a bond to satisfy a judgment that a customer won against the lender because the bond's language was not limited to violations of the Check-Cashers Act, §§ 23-52-101 — 23-52-117. Ark. Bd. of Collection Agencies v. McGhee, 372 Ark. 136, 271 S.W.3d 512 (2008).

Trial court erred in appellants' declaratory judgment action in holding that the Arkansas Check-Cashers Act was constitutional because the Act clearly authorized usurious interest rates; because the Act clearly authorized loans charging usurious rates of interest in contravention of the limits set forth in subsections (a) and (b) of this section, it was unconstitutional in its entirety. McGhee v. Ark. State Bd. of Collection Agencies, 375 Ark. 52, 289 S.W.3d 18 (2008).

Computation of Interest.

Where customer provided pawn shop owner with the deed to her house, which she had recently purchased for $75,000, in exchange for $15,000, and agreed to make payments over 10 years for a total of $30,000, the trial court did not err in finding that the transaction was a loan and not a property conveyance, and that the loan was usurious under Ark. Const. art. 19, § 13. Smith v. Eisen, 97 Ark. App. 130, 245 S.W.3d 160 (2006).

Deferred Presentment.

Arkansas State Board of Collection Agencies' decision that it was unable to pursue money from a surety bond was arbitrary, capricious, and an abuse of discretion because a consent judgment entered in favor of a customer determined that a corporation licensed under § 23-52-107 had charged usurious rates of interest with regards to a deferred presentment agreement, in violation of Arkansas State Board of Collection Agencies Regulation XXI and subsection (a) of this section. Staton v. Ark. State Bd. of Collection Agencies, 372 Ark. 387, 277 S.W.3d 190 (2008).

Intent.

Intent to commit usury by accountant was clearly evidenced by his tax forms, in which he represented that he was receiving 8.5% interest on his loan with the employee, as well as his own testimony that he intended to charge 8.5% interest on the loan; the circumstances clearly indicated that the accountant intended to charge a rate of interest that proved to be usurious. Hickman v. Courtney, 361 Ark. 5, 203 S.W.3d 632 (2005).

Judgments.

Based on a review of the history and plain language of § 16-65-114(a) and the emergency clause of Acts 1985, No. 782, § 3, the legislature intended the interest rate limitation in this section to apply to limit judgments in all cases, and *Carroll Elec. Coop. Corp v. Carlton*, 319 Ark. 555, 892 S.W.2d 496 (1995) and *Gavin v. Gavin*, 319 Ark. 270, 890 S.W.2d 592 (1995) are overruled to the extent they conflict with the rule; therefore, a 10 percent post-judgment interest award in a tort case was erroneous because it exceeded the 8.25 percent interest rate allowed in the particular case under this section. Hartford Fire Ins. Co. v. Sauer, 358 Ark. 89, 186 S.W.3d 229 (2004).

Rate Determination.

Post-judgment interest rate of 6.25 percent on non-contract damages imposed by a trial court was proper as the 10 percent post-judgment interest that the prevailing party sought was not awardable if it exceeded the amount allowed by the Arkansas Constitution. Superior Fed. Bank v. Mackey, 84 Ark. App. 1, 129 S.W.3d 324 (2003).

Under Ark. Const. art. 19, § 13, amend. 60, the primary credit rate should be applied in place of the Federal Reserve Discount Rate; therefore, summary judgment was improperly granted to seller in a dispute over whether a contract for deed was usurious in nature because, even though the Federal Reserve Discount Rate was no longer in effect, the primary credit rate applied instead. Pakay v. Davis, 367 Ark. 421, 241 S.W.3d 257 (2006).

Void Contracts.

Contract containing an option to purchase real estate was not void in its entirety based on an usurious interest rate because it was void only as to the unpaid interest under Arkansas law; the act of seeking specific performance did not waive the issue of usury, and estoppel did not apply since the document was drafted by the agent of the potential borrowers. Van Carr Enters. v. Hamco, Inc., 365 Ark. 625, 232 S.W.3d 427 (2006).

§ 14. Lotteries.

(a) The General Assembly may enact laws to establish, operate, and regulate State lotteries.

(b) Lottery proceeds shall be used solely to pay the operating expenses of lotteries, including all prizes, and to fund or provide for scholarships and grants to citizens of this State enrolled in public and private non-profit two-year and four-year colleges and universities located within the State that are certified according to criteria established by the General Assembly. The General Assembly shall establish criteria to determine who is eligible to receive the scholarships and grants pursuant to this Amendment.

(c) Lottery proceeds shall not be subject to appropriation by the General Assembly and are specifically declared to be cash funds held in trust separate and apart from the State treasury to be managed and maintained by the General Assembly or an agency or department of the State as determined by the General Assembly.

(d) Lottery proceeds remaining after payment of operating expenses and prizes shall supplement, not supplant, non-lottery educational resources.

(e) This Amendment does not repeal, supersede, amend or otherwise affect Amendment 84 to the Arkansas Constitution or games of bingo and raffles permitted therein.

(f) Except as herein specifically provided, lotteries and the sale of lottery tickets are prohibited. [As amended by Const. Amend. 87.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by an initiated measure (now Amend. 87) and was adopted at the 2008 general election by a vote of 648,122 for and 383,467 against.

Prior to amendment, this section read: "§ 14. Lotteries prohibited.

No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed."

§ 16. Contracts for public buildings or bridges.

CASE NOTES

Competitive Bids.

This section applied only to county contracts. Therefore, Ark. Code Ann. §§ 19-4-1413 and 19-4-1415, which allowed for state contracts to be let without competitive bidding in certain circumstances, were not unconstitutional under this section. Gatzke v. Weiss, 375 Ark. 207, 289 S.W.3d 455 (2008).

AMENDMENTS TO THE CONSTITUTION OF ARKANSAS OF 1874

AMEND. 7. INITIATIVE AND REFERENDUM (CONST., ART. 5, § 1, AMENDED).

CASE NOTES

Cited: Cox v. Daniels, 374 Ark. 437, 288 S.W.3d 591 (2008).

AMEND. 9. SUPREME COURT.

Publisher's Notes. This amendment was proposed by the General Assembly at the 1923 session (see Acts 1923, S.J.R. 1, p. 796) and approved at the general election of Oct. 7, 1924, by vote of 52,151 for and 40,955 against. It was declared adopted in Brickhouse v. Hill, 167 Ark. 513, 268 S.W. 865 (1925).

This amendment is being set out to correct an error in the 2004 Replacement Volume.

Effective Dates.

Ark. Const. Amend. 9, § 3: effective 60 days after approval and adoption by the people of the State of Arkansas.

§ 1. Enlargement — Sitting in division.

The Supreme Court shall be composed of five judges, one of whom shall be styled Chief Justice and elected as such, any three of whom shall in every case be necessary to a decision. Provided if it should hereafter become necessary to increase the number of the judges of the Supreme Court, the Legislature may provide for two additional judges and may also provide for the court sitting in divisions under such regulations as may be prescribed by law; provided further, that should the court sit in divisions, in all cases where the construction of the Constitution is involved, the cause shall be heard by the court in banc, and in all cases when a judge of a division dissents from the opinion therein, at the request of the Chief Justice, or such dissenting justice, the cause shall be transferred to the court in banc for its decision.

Publisher's Notes. Acts 1925, No. 205, § 1, increased the number of judges to seven.

§ 2. Compensation of judges.

The Supreme Court judges shall at stated times receive compensation for their services to be fixed by law. When the salary of the judges under this amendment to the Constitution shall have been established by law, such salary shall not thereafter be increased or diminished during their respective terms. Until otherwise provided by law, the judges of the Supreme Court shall each receive a salary of Seven thousand five hundred dollars per annum.

Publisher's Notes. This section is probably superseded by Ark. Const. Amend. 43.

AMEND. 14. LOCAL ACTS.

CASE NOTES

Analysis

Classification.
—Rational Basis Test.

Classification.

The classification in Acts 1997, No. 727, § 2, that limited the application of this section only to border cities along the Mississippi River, a small portion of the state, was not rationally related to the purpose of the legislation, which was to assist certain cities compete with other cities; further, Acts 1997, No. 727, § 2, is clearly local and special legislation enacted in violation of this amendment. Weiss v. Geisbauer, 363 Ark. 508, 215 S.W.3d 628 (2005).

Even if the Supreme Court were to look to an act's emergency clause for its distinct purpose, boilerplate language in an emergency clause that says that the appropriation is "essential to the operation of the agency" is too broad and vague to meet the test of distinctly explaining "how" the money is to be spent. Wilson v. Weiss, 370 Ark. 205, 258 S.W.3d 351 (2007).

Neither the circuit court nor the libraries provided a rational and legitimate reason for funding libraries in Jacksonville and Cleburne County as opposed to other libraries throughout the state, therefore, the circuit court erred in finding Acts 2005, Nos. 825 and 932 were constitutional. Wilson v. Weiss, 370 Ark. 205, 258 S.W.3d 351 (2007).

Because there was no legitimate reason that Reed's Bridge and the Jacksonville Museum should be treated differently from other equally worthy military and historic attractions in Arkansas, the circuit court's orders regarding 2005 Ark. Acts 644 and 1473(1)(C) were reversed. The Supreme Court held that those acts violated this amendment. Wilson v. Weiss, 370 Ark. 205, 258 S.W.3d 351 (2007).

Before an act may be declared unconstitutional special legislation, the challenger of the legislation must show not only that it affects only a single portion of the state, but also that the act is not rationally related to a legitimate governmental purpose. Benton County v. City of Bentonville, 373 Ark. 356, 284 S.W.3d 52 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 420 (June 19, 2008).

Question presented on a challenge under this amendment is whether the Arkansas General Assembly could have had a rational basis for making the classification. The phrase "could have had" shows that a court looks to see whether the legislation violated the amendment at the time the legislation was adopted. Benton County v. City of Bentonville, 373 Ark. 356, 284 S.W.3d 52 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 420 (June 19, 2008).

Summary judgment was properly awarded to cities in an action by a county claiming that 1963 Ark. Acts 219, which directed the county collector to apportion to the cities 90 percent of the road funds collected within the corporate limits of those cities, was unconstitutional where the county failed to rebut the presumption that the act was related to a legitimate governmental interest when enacted. Benton County v. City of Bentonville, 373 Ark. 356, 284 S.W.3d 52 (2008), rehearing denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 420 (June 19, 2008).

—Rational Basis Test.

Appropriations act that pertained to one city was unconstitutional under Ark. Const. amend. 14 as the reasons put forth to justify the appropriation for infrastructure, sewer and streets could be advanced by multiple cities and communities throughout the state, and no reason rationally related to a legitimate state purpose had been provided for singling out that city for special treatment. Wilson v. Weiss, 368 Ark. 300, 245 S.W.3d 144 (2006).

In enacting Acts 2005, No. 1151, the fact that the statute ultimately affected less than all the state's territory did not per se render it local or special legislation; the Supreme Court agreed with the assessment that the purpose of Act 1151 was to promote live racing and the associated agribusiness, tourism, and related economic activity, including job creation and economic development, and to stop the flow of money out of state which might otherwise be spent in Arkansas, and in addition, the residents of the entire state could benefit from the tax generated from authorized games. The General Assembly devised a comprehensive plan that reasonably addressed these goals in a rational manner. Gallas v. Alexander, 371 Ark. 106, 263 S.W.3d 494 (2007).

Cited: Davis v. Parham, 362 Ark. 352, 208 S.W.3d 162 (2005); White v. Ark. Capital Corporation/Diamond State Ventures, 365 Ark. 200, 226 S.W.3d 825 (2006).

AMEND. 18. TAX TO AID INDUSTRIES.

CASE NOTES

Practice of Law.

Insurance company was prohibited by § 16-22-211 from appointing one of its in-house attorneys to represent a defendant insured in litigation arising out of an accident. It was undisputed that the insurer was not and would not become a party to the lawsuit as provided in one of the exceptions to § 16-22-211. Brown v. Kelton, 2011 Ark. 93, — S.W.3d — (2011).

AMEND. 26. WORKERS' COMPENSATION (CONST., ART. 5, § 32, AMENDED).

CASE NOTES

Exclusivity.

Arkansas Workers' Compensation Act, § 11-9-101 et seq., including the exclusive-remedy provision of § 11-9-105(a), is made possible by this amendment, which amended Ark. Const. Art. V, § 32; that amendment provides that the Arkansas general assembly has the power to enact legislation prescribing the amount of compensation employers are required to pay for injuries or deaths of employees. Honeysuckle v. Curtis H. Stout, Inc., 2010 Ark. 328, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 500 (Oct. 28, 2010).

Cited: Moses v. Hanna's Candle Co., 366 Ark. 233, 234 S.W.3d 872 (2006).

AMEND. 28. REGULATING PRACTICE OF LAW.

CASE NOTES

Analysis

Judiciary Authority.
Legislative Power.
Practice of Law.
—Abstract and Title Companies.

Judiciary Authority.

Trial court properly dismissed the complaint with prejudice because the Arkansas Deceptive Trade Practices Act, § 4-88-101, did not apply to the practice of law, and the Arkansas Supreme Court made rules regulating the practice of law and that responsibility could not be discharged if it were dependent upon or controlled by statutes enacted by the Arkansas General Assembly; the attorney agreed to represent the husband in the medical malpractice action, which was dismissed with prejudice because the attorney was not authorized to practice law in Arkansas. Preston v. Stoops, 373 Ark. 591, 285 S.W.3d 606 (2008).

Legislative Power.

Trial court erred when it granted an automotive group summary judgment on a class's Arkansas Deceptive Trade Practices Act (ADTPA) claim involving the unauthorized practice of law, as Ark. Const. Amend. 28 did not preclude the General Assembly from providing a cause of action for such activity by a nonlawyer, such as under the ADTPA. Campbell v. Asbury Auto., Inc., 2011 Ark. 157, — S.W.3d — (2011).

Practice of Law.

—Abstract and Title Companies.

Arkansas Committee on the Unauthorized Practice of Law does not have exclusive jurisdiction to determine issues concerning the unauthorized practice of law; thus, trial court had subject matter jurisdiction over a case where a title company was accused of engaging in the unauthorized practice of law by charging a document preparation fee. Am. Abstract & Title Co. v. Rice, 358 Ark. 1, 186 S.W.3d 705 (2004).

AMEND. 29. FILLING VACANCIES IN OFFICE.

CASE NOTES

Purpose.

Circuit court properly determined that § 16-13-104 is unconstitutional as it conflicts with Ark. Const. amend. 80, § 16, which establishes judicial qualifications and, thus, a circuit court judge cannot run for election for another judicial position; further, Ark. Const. amend. 29 does not apply as the purpose behind this amendment was to deny advantages of incumbency to an appointed judge. Daniels v. Dennis, 365 Ark. 338, 229 S.W.3d 880 (2006).

Cited: Pederson v. Stracener, 354 Ark. 716, 128 S.W.3d 818 (2003).

§ 5. Election to fill — Placing names on ballots.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Ballot Access Restrictions in Representative Government: An Ode to the Wasted Vote, 26 U. Ark. Little Rock L. Rev. 703.

AMEND. 30. CITY LIBRARIES.

CASE NOTES

Cited: Robinson v. Villines, 2009 Ark. 632, — S.W.3d — (2009).

§ 5. Petition for tax levy — Election.

(a) Whenever 100 or more taxpaying electors of any city, having a population of not less than 5,000, shall file a petition with the Mayor asking that an annual tax on real and personal property be levied for capital improvements to or construction of a public city library and shall specify a rate of taxation not to exceed three mills on the dollar, the question as to whether such tax shall be levied shall be submitted to the qualified electors of such city at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

For a ____ mill tax on real and personal property to be used for capital improvements to or construction of a public city library.

Against a ____ mill tax on real and personal property to be used for capital improvements to or construction of a public city library.

(b) The electors may authorize the governing body of the city to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized by this section for the purpose of retiring the bonds. The ballot submitting the question to the voters shall be in substantially the following form:

For a ____ mill tax on real and personal property within the city, to be pledged to an issue or issues of bonds not to exceed $____, in aggregate principal amount, to finance capital improvements to or construction of the city library and to authorize the issuance of the bonds on such terms and conditions as shall be approved by the city.

Against a ____ mill tax on real and personal property within the city, to be pledged to an issue or issues of bonds not to exceed $____, in aggregate principal amount, to finance capital improvements to or construction of the city library and to authorize the issuance of the bonds on such terms and conditions as they shall be approved by the city.

(c) The maximum rate of any special tax to pay bonded indebtedness, as authorized by paragraph (b) hereof shall be stated on the ballot.

(d) The special tax for payment of bonded indebtedness authorized in paragraph (b) hereof shall constitute a special fund pledged as security for the payment of such indebtedness. The special tax shall never be extended for any purpose, nor collected for any greater length of time than necessary to retire such bonded indebtedness, except that tax receipts in excess of the amount required to retire the debt according to

its terms may, subject to covenants entered into with the holders of the bonds, be pledged as security for the issuance of additional bonds if authorized by the voters. The tax for such additional bonds shall terminate within the time provided for the tax originally imposed. Upon retirement of the bonded indebtedness, any surplus tax collections, which may have accumulated shall be transferred to the general funds of the city, and shall be used for maintenance and operation of the public city library.

(e) Notwithstanding any other provision of this amendment, a tax approved by the voters for the purpose of paying the bonded indebtedness shall not be reduced or diminished, nor shall it be used for any other purpose than to pay principal of, premium or interest on, and the reasonable fees of a trustee or paying agent, so long as the bonded indebtedness shall remain outstanding and unpaid. [Added by Const. Amend. 72, § 3; amended by Const. Amend. 89.]

Publisher's Notes. This amendment repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January 1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 (now Amend. 89) and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

Prior to amendment, the introductory language of subsection (b) read: "The electors may authorize the governing body of the city to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized by this section for the purpose of retiring the bonds. The interest rate on any bonds shall not exceed the rate provided by this Constitution. The ballot submitting the question to the voters shall be in substantially the following form:"

AMEND. 35. WILD LIFE — CONSERVATION — ARKANSAS STATE GAME AND FISH COMMISSION

§ 1. Commission created — Members — Powers.

CASE NOTES

In General.

Authority granted to the Arkansas Game and Fish Commission under Ark. Const. amend. 35, § 1, is not exclusive because the language of the section does not include words of exclusivity and because such an interpretation would lead to absurd results that would potentially invalidate the authority of many state agencies. Ark. Wildlife Fed'n v. Ark. Soil Water Conservation Comm'n, 366 Ark. 50, 233 S.W.3d 615 (2006).

Summary judgment was properly awarded to the Arkansas Soil and Water Conservation Commission (ASWCC) in an action by appellants challenging its authority to enter into a project with the U.S. Department of the Army where the responsibilities of the ASWCC under the project did not constitute the type of management or control of the wildlife resources that was reserved to the Arkansas Game and Fish Commission under Ark. Const., amend. 35, § 1. Ark. Wildlife Fed'n v. Ark. Soil Water Conservation Comm'n, 366 Ark. 50, 233 S.W.3d 615 (2006).

§ 7. Executive secretary and other personnel — Selection — Salaries and expenditures.

The Commission shall elect an Executive Secretary, whose salary shall not exceed that of limitations placed on other constitutional departments; and other executive officers, supervisor, personnel, office assistants, wardens, game refuge keepers, and hatchery employees, whose salaries and expenditures must be submitted to the Legislature and approved by an Act covering specific items in the appropriation as covered by Article XVI Section 4 of the Constitution. [As amended by Const. Amend. 86.]

Publisher's Notes. This amendment, effective January 1, 2009, was proposed by H.J.R. 1004 (now Amend. 86) during the 2007 Regular Session and adopted at the November 2008 general election by a vote of 664,671 for and 292,436 against.

Amendments. The 2007 amendment deleted "biennial" preceding "appropriation" near the end of the section.

§ 8. Nepotism prohibited — Powers of arrest — Funds — Use — Purposes — Game Protection Fund — Audit of accounts — Resident hunting and fishing licenses — Powers of commission.

CASE NOTES

Powers of Commission.

The Arkansas Game and Fish Commission was authorized under this amendment and §§ 22-5-809(c)(4), 22-5-812(c) to enter into gas leases with private companies and to deposit the revenue into the Game Protection Fund. Gas leases fall within the ambit of this amendment. Dockery v. Morgan, 2011 Ark. 94, — S.W.3d — (2011).

AMEND. 38. COUNTY LIBRARIES.

§ 5. Petition for tax levy — Election.

(a) Whenever 100 or more taxpaying electors of any county shall file a petition in the County Court asking that an annual tax on real and personal property be levied for the purpose of capital improvements to or construction of a public county library or a county library service or system and shall specify a rate of taxation not to exceed three mills on the dollar, the question as to whether said tax shall be levied shall be submitted to the qualified electors of such county at a general or special election. Such petition must be filed at least thirty days prior to the election at which it will be submitted to the voters. The ballot shall be in substantially the following form:

FOR a ____ mill tax on real and personal property to be used for capital improvements to or construction of a public county library or county library service or system.

AGAINST a ____ mill tax on real and personal property to be used for capital improvements to or construction of a public county library or county library service or system.

(b) The voters may authorize the County Court to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized in Section 1 of this Amendment for the purpose of retiring the bonds. The ballot submitting the question to the voters shall be in substantially the following form:

For a _____ mill tax on real and personal property within the county, to be pledged to an issue or issues of bonds not to exceed $_____, in aggregate principal amount, to finance capital improvements to or construction of the county library or county library service or system, and to authorize the issuance of the bonds on such terms and conditions as shall be approved by the County Court.

Against a _____ mill tax on real and personal property within the county, to be pledged to an issue or issues of bonds not to exceed $_____, in aggregate principal amount, to finance capital improvements to or construction of the county library or county library service or system, and to authorize the issuance of the bonds on such terms and conditions as shall be approved by the County Court.

(c) The maximum rate of any special tax to pay bonded indebtedness, as authorized by paragraph (b) hereof shall be stated on the ballot.

(d) The special tax for payment of bonded indebtedness authorized in paragraph (b) hereof shall constitute a special fund pledged as security for the payment of such indebtedness. The special tax shall never be extended for any purpose, nor collected for any greater length of time than necessary to retire such bonded indebtedness, except that tax receipts in excess of the amount required to retire the debt according to its terms may, subject to covenants entered into with the holders of the bonds, be pledged as security for the issuance of additional bonds if authorized by the voters. The tax for such additional bonds shall terminate within the time provided for the tax originally imposed. Upon retirement of the bonded indebtedness, any surplus tax collections, which may have accumulated, shall be transferred to the general funds of the county, and shall be used for maintenance of the county library or county library service or system.

(e) Notwithstanding any other provision of this Amendment, a tax approved by the voters for the purpose of paying the bonded indebtedness shall not be reduced or diminished, nor shall it be used for any other purpose than to pay principal of, premium or interest on, and the reasonable fees of a trustee or paying agent, so long as the bonded indebtedness shall remain outstanding and unpaid. [Added by Const. Amend. 72, § 6; amended by Const. Amend. 89.]

Publisher's Notes. This amendment repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January

1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 (now Amend. 89) and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

Prior to amendment, the introductory language of subsection (b) read: "The voters may authorize the County Court to issue bonds as prescribed by law for capital improvements to or construction of the library and to authorize the pledge of all, or any part of, the tax authorized in Section 1 of this Amendment for the purpose of retiring the bonds. The interest rate on any bonds shall not exceed the rate provided in this Constitution. The ballot submitting the question to the voters shall be in substantially the following form:"

AMEND. 47. STATE AD VALOREM TAX PROHIBITION.

CASE NOTES

Cited: Weiss v. McFadden, 360 Ark. 76, 199 S.W.3d 649 (2004).

AMEND. 51. VOTER REGISTRATION.

§ 6. Voter registration application forms.

(a)(1) The mail voter registration application form may only require identifying information, including signature or mark, and other information, including data relating to previous registration by the applicant, as is necessary to assess the applicant's eligibility and to administer voter registration and other parts of the election process.

(2) Such forms shall include, in identical print, statements that:

(A) Specify voter eligibility requirements;

(B) Contain an attestation that the applicant meets all voter eligibility requirements and that the applicant does not claim the right to vote in another county or state;

(C) Specify the penalties provided by law for submission of a false voter registration application;

(D) Inform applicants that where they register to vote will be kept confidential; and

(E) Inform applicants that declining to register will also be kept confidential.

(3) The following information will be required of the applicant:

(A) Full name;

(B) Mailing address;

(C) Residence address and any other information necessary to identify the residence of the applicant;

(D) If previously registered, the name then supplied by the applicant, and the previous address, county, and state;

(E) Date of birth;

(F) A signature or mark made under penalty of perjury that the applicant meets each requirement for voter registration;

(G) If the applicant is unable to sign his or her name, the name, address, and telephone number of the person providing assistance;

(H) If the applicant has a current and valid driver's license, the applicant's driver's license number;

(I) If the applicant does not have a current and valid driver's license, the last four (4) digits of the applicant's social security number; and

(J) If the applicant does not have a current and valid driver's license number or social security number, the Secretary of State will assign the applicant a number which will serve to identify the applicant for voter registration purposes, and this number shall be placed on the application.

(4) The following information may be requested on the registration card, but it shall not be required:

(A) Telephone number where the applicant may be contacted; and

(B) Political party with which the applicant wishes to be affiliated, if any.

(5) The mail voter registration application shall not include any requirement for notarization or other formal authentication.

(6) The mail voter registration application form shall include the following questions along with boxes for the applicant to check "yes" or "no" in response:

(A) "Are you a citizen of the United States of America and an Arkansas resident?";

(B) "Will you be eighteen (18) years of age on or before election day?";

(C) "Are you presently adjudged mentally incompetent by a court of competent jurisdiction?"; and

(D) "Have you ever been convicted of a felony without your sentence having been discharged or pardoned?"

(7) The mail voter registration application form shall include the following statements immediately following the questions asked in subdivision (a)(6) of this section:

(A) "If you checked "No" in response to either questions A or B, do not complete this form.";

(B) "If you checked "Yes" in response to either questions C or D, do not complete this form."; and

(C) The mail-in voter registration application form shall include the following statement:

"If your voter registration application form is submitted by mail and you are registering for the first time, and you do not have a valid driver's license number or social security number, in order to avoid the additional identification requirements upon voting for the first time you must submit with the mailed registration form: (a) a current and valid photo identification; or (b) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address."

(8) If an applicant for voter registration fails to provide any of the information required by this section, the permanent registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for its completion before the next election for federal office.

(9) The mail voter registration application shall be pre-addressed to the Secretary of State.

(b)(1) The voter registration application portion of the process used by the Office of Driver Services and state revenue offices shall include:

(A) The question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(B) A statement that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes;

(C) A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes;

(D) Voter registration eligibility requirements;

(E) Penalties provided by law for providing false information;

(F) An attestation that the applicant meets each eligibility requirement and that the applicant does not claim the right to vote in another county or state; and

(G) A space for the applicant's signature or mark.

(2) The voter registration application portion shall require the signature of the applicant under penalty of perjury, but shall not require notarization or other formal authentication.

(c) Public assistance agencies and disabilities agencies shall provide, in addition to the federal or state mail voter registration application form, a declination form, to be approved by the State Board of Election Commissioners, which includes the following question and statements:

(1) The question in prominent type, "IF YOU ARE NOT REGISTERED TO VOTE WHERE YOU LIVE NOW, WOULD YOU LIKE TO APPLY TO REGISTER TO VOTE HERE TODAY? YES .... NO ....";

(2) The statement in close proximity to the question above and in equally prominent type, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME";

(3) The statement, "APPLYING TO REGISTER OR DECLINING TO REGISTER TO VOTE WILL NOT AFFECT THE AMOUNT OF ASSISTANCE THAT YOU WILL BE PROVIDED BY THIS AGENCY";

(4) The statement, "IF YOU WOULD LIKE HELP IN FILLING OUT THE VOTER REGISTRATION APPLICATION FORM, WE WILL HELP YOU. THE DECISION WHETHER TO SEEK OR ACCEPT HELP IS YOURS. YOU MAY FILL OUT THE APPLICATION FORM IN PRIVATE";

(5) The statement, "IF YOU BELIEVE THAT SOMEONE HAS INTERFERED WITH YOUR RIGHT TO REGISTER OR TO DECLINE TO REGISTER TO VOTE, YOUR RIGHT TO PRIVACY IN DECIDING WHETHER TO REGISTER OR IN APPLYING TO REGISTER TO VOTE, OR YOUR RIGHT TO CHOOSE YOUR OWN POLITICAL PARTY OR OTHER POLITICAL PREFERENCE, YOU MAY FILE A COMPLAINT WITH THE SECRETARY OF STATE AT ....." (filled in with the address and telephone number of the Secretary of State's office);

(6) The statement, "IF YOU DECLINE TO REGISTER TO VOTE, THE FACT THAT YOU HAVE DECLINED TO REGISTER WILL REMAIN CONFIDENTIAL AND WILL BE USED ONLY FOR VOTER REGISTRATION PURPOSES"; and

(7) The statement, "IF YOU DO REGISTER TO VOTE, THE OFFICE AT WHICH YOU SUBMIT A VOTER REGISTRATION APPLICATION WILL REMAIN CONFIDENTIAL AND WILL BE USED ONLY FOR VOTER REGISTRATION PURPOSES". [As amended by Acts 1971, No. 828, § 1; 1995, No. 947, § 2; 1995, No. 964, § 2; 2003, No. 995, § 1; 2009, No. 659, § 1.]

Amendments. The 2009 amendment inserted "and that the applicant does not claim the right to vote in another county or state" in (a)(2)(B) and (b)(1)(F); substituted "been convicted" for "pleaded guilty or nolo contendere to, or found guilty" in (a)(6)(D); deleted (a)(6)(E), which read: "'Do you claim the right to vote in another county or state?'"; substituted "either questions C or D" for "one or more of questions C, D, or E" in (a)(7)(B); rewrote (a)(7)(C); and made related changes.

RESEARCH REFERENCES

Ark. L. Notes. Cihak and Springman, HAVA and Arkansas Election Law Reform: Compliance and Promise, 2006 Arkansas L. Notes 1.

§ 9. Application to register.

(a) All persons may register who:

(1) Have not been convicted of a felony unless the person's sentence has been discharged or the person has been pardoned;

(2) Have not been adjudged mentally incompetent by a court of competent jurisdiction; and

(3) Meet one (1) of the following requirements:

(A) Are qualified electors who have not previously registered;

(B) Will become qualified electors during the thirty-day period immediately prior to the next election scheduled within the county; or

(C) Are otherwise qualified electors but whose registration has been cancelled in a manner provided for by this amendment.

(b) Registration shall be in progress at all times except during the thirty-day period immediately prior to any election scheduled within the county, during which period registration of voters shall cease for that election, but registration during such period shall be effective for subsequent elections.

(c)(1) The permanent registrar shall register qualified applicants when a legible and complete voter registration application is received and acknowledged by the permanent registrar.

(2) Any person who assists applicants with a voter registration application as part of a voter registration drive or who, in furtherance of a voter registration drive, gathers or possesses completed applications for submission to the permanent registrar or Secretary of State shall deliver all applications in his or her possession to the permanent registrar or Secretary of State within twenty-one (21) days of the date on the voter registration application and, in any event, no later than the deadline for voter registration for the next election.

(3) The permanent registrar shall register qualified applicants who apply to register to vote by mail using the state or federal mail voter registration application form if:

(A) A legible and complete voter registration application form is postmarked not later than thirty (30) days before the date of the election, or, if the form is received by mail without a postmark, not later than twenty-five (25) days before the date of an election; and

(B)(i) The applicant provides a current valid driver's license number or the last four (4) digits of the applicant's social security number; or

(ii) If an applicant for voter registration does not have a valid driver's license or a social security number, the Secretary of State shall assign the applicant a number that will serve as a unique identifier of the applicant for voter registration purposes.

(d) The permanent registrar shall notify applicants whether their applications are accepted or rejected or are incomplete. If information required by the permanent registrar is missing from the voter registration application, the permanent registrar shall contact the applicant to obtain the missing information.

(e) The Secretary of State and the Director of the Office of Driver Services shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the Office of Driver Services to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration. The Director of the Office of Driver Services shall enter into an agreement with the Commissioner of Social Security to verify driver's license information according to § 303 of the Federal Help America Vote Act of 2002.

(f) Registration records shall be entered promptly in the computerized statewide registration record files. If the applicant lacks one (1) or more of the qualifications required by law of voters in this state, the permanent registrar shall not register the applicant, but shall document the reason for denying the applicant's registration and promptly file or enter the application and the documented reason for denying registration in the statewide registration record files.

(g) If the permanent registrar has any reason to doubt the qualifica-

tions of an applicant for registration, he or she shall submit such application to the county board of election commissioners, and such board shall make a determination with respect to such qualifications and shall instruct the permanent registrar regarding the same.

(h) If any person eligible to register as a voter is unable to register in person at the permanent registrar's office by reason of sickness or physical disability, the permanent registrar shall register the applicant at his or her place of abode within such county, if practicable, in the same manner as if he or she had appeared at the permanent registrar's office.

(i) Notwithstanding other provisions of this amendment, every person in any of the following categories who is absent from the place of his or her voting residence may vote without prior registration by absentee ballot by submission of a federal postal card application as provided for in the Uniformed and Overseas Citizens Absentee Voting Act in any primary, special, school, or general election held in his or her election precinct if he or she is otherwise eligible to vote in that election:

(1) Members of the uniformed services of the United States while in active duty or service, and their spouses and dependents who, by reason of the active duty or service of the member, are absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) Members of the Merchant Marine while in active duty or service, and their spouses and dependents who, by reason of the active duty or service of the member, are absent from the place of residence where the spouse or dependent is otherwise qualified to vote; and

(3) Citizens of the United States residing or temporarily outside the territorial limits of the United States and the District of Columbia.

(j)(1) The Secretary of State shall be responsible for providing to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state, information regarding voter registration procedures and absentee ballot procedures.

(2) No later than ninety (90) days after the date of each regularly scheduled general election for federal office, the Secretary of State shall submit a report, based on information submitted to him or her by the permanent registrars of each county, to the Election Assistance Commission on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of the ballots which were returned by the voters and cast in the election.

(3) The Secretary of State shall make the report available to the general public.

(k) Any person whose registration status or voting eligibility is affected adversely by an administrative determination under this amendment may appeal such adverse determination within five (5) days of receipt of notice thereof to the county board of election commissioners. The county board of election commissioners shall act on such appeal and render its decision within ten (10) days of its receipt. Within thirty (30) days after receipt of such decision, any aggrieved

party may appeal further to the circuit court of the county.

(l) If an election law deadline occurs on a Saturday, Sunday, or legal holiday, the deadline shall be the next day which is not a Saturday, Sunday, or legal holiday. [As amended by Acts 2003, No. 995, § 3; 2005, No. 1952, § 1; 2009, No. 659, § 2.]

Publisher's Notes. Section 9 of Amendment 51 to the Arkansas Constitution was amended by the General Assembly pursuant to the authority granted in Section 19 of that Amendment.

Amendments. The 2009 amendment, inserted (a)(1)-(3); inserted "Meet one (1) of the following requirements" in the introductory language of (a)(3); inserted "otherwise" in (a)(3)(C); in the introductory language of (i), inserted "prior," "by submission of a federal postal card application as provided for in the Uniformed and Overseas Citizens Absentee Voting Act," and "school"; inserted "who, by reason of the active duty or service of the member, are absent from the place of residence where the spouse or dependent is otherwise qualified to vote" in (i)(1) and (i)(2); deleted "and their spouses and dependents when residing with or accompanying them" following "Columbia" in (i)(3); and made related and minor stylistic changes.

U.S. Code. The federal Help America Vote Act of 2002, referred to in (e), is Pub. L. No. 107-252. Section 303 of that act is compiled as42 U.S.C. § 15483.

CASE NOTES

Registered Voters.

Trial court erred in dismissing appellants' complaint challenging the validity of the certification of a "wet/dry" initiative petition for placement upon a ballot at a general election because subdivision (c)(1) of this section, Ark. Const., Art. 5, § 1, and Ark. Code Ann. § 7-9-101(5) did not allow persons to sign the petition before they became registered voters. Mays v. Cole, 374 Ark. 532, 289 S.W.3d 1 (2008).

§ 10. Transfer and change of status.

(a) Upon a change of legal residence within the county, or a change of name, any registered voter may cause his or her registration to be transferred to his or her new address or new name by completing and mailing a federal or state mail voter registration application form, by updating his or her address at the Office of Driver Services, any state revenue office, public assistance agency, disabilities agency, or other voter registration agency, by signing a mailed request to the permanent registrar, giving his or her present address and the address at which he or she was last registered or his or her present name and the name under which he or she was last registered, or by applying in person at the office of the permanent registrar.

(b)(1) Upon a change of legal residence from one (1) county within the state to another county within the state, any registered voter may cause his or her registration to be transferred to the new county at his or her new address by:

(A) Completing and mailing a federal or state mail voter registration application form;

(B) Updating his or her new address at a voter registration agency, including without limitation the Office of Driver Services or a state revenue office, public assistance agency, or disabilities agency;

(C) Signing a mailed request to the permanent registrar giving the voter's present address and the address at which the voter was last registered; or

(D) Applying in person for the transfer at the office of the permanent registrar.

(2)(A) If the updated registration information is actually received in the office of the county clerk of the voter's new county not later than four (4) days before a scheduled election, the voter shall have the right to vote in the scheduled election in the precinct into which the voter just moved in the new county.

(B) If the updated registration information is not actually received by the fourth day before a scheduled election, the voter shall not be eligible to vote in the scheduled election.

(c) If the change of legal residence is made pursuant to subsection (a) or subdivision (d)(1) of this section during the thirty-day administrative cut-off period immediately prior to any election scheduled within the county, the registered voter shall retain his or her right to vote in the scheduled election in the precinct to which he or she just moved.

(d) The permanent registrar shall conduct a uniform, nondiscriminatory address confirmation program during each odd-numbered year to ensure that voter registration lists are accurate and current. The address confirmation program shall be completed not later than ninety (90) days prior to a primary or general election for federal office. Based on change of address data received from the United States Postal Service or its licensees, or other unconfirmed data indicating that a registered voter no longer resides at his or her registered address, the permanent registrar shall send a forwardable address confirmation notice, including a postage-paid and preaddressed return card, to enable the voter to verify or correct the address information.

(1) If change of address data indicate that the voter has moved to a new residence address in the same county and, if the county is divided into more than one (1) congressional district, the same congressional district, the address confirmation notice shall contain the following statement:

"We have received notification that you have moved to a new address in _____ County (or in the _____ Congressional District). We will reregister you at your new address unless, within ten (10) days, you notify us that your change of address is not a change of your permanent residence. You may notify us by returning the attached postage-paid postcard or by calling (_____) _____-_____. If this is not a permanent change of residence and if you do not notify us within ten (10) days you may be required to update your residence address in order to vote at future elections."

(2) If the change of address data indicates that the voter has moved to a new address in another county or, if a county is divided into more than one (1) congressional district, to a new address in the same county but in a new congressional district, the notice shall include the

following statement:

"We have received notification that you have moved to a new address not in _____ County (or not in the _____ Congressional District). If you no longer live in _____ County (or in the _____ Congressional District), you must transfer your registration to your new residence address in order to vote in the next election. If you are still an Arkansas resident, you may obtain a form to transfer your registration by calling your county clerk's office or the Secretary of State. If your change of address is not a change of your permanent residence, you must return the attached postage-paid postcard. If you do not return this card and continue to reside in _____ County (and in the _____ Congressional District), you may be required to provide identification and update your residence address in order to vote at future elections, and if you do not vote at any election in the period between the date of this notice and the second federal general election after the date of this notice, your voter registration will be cancelled and you will have to reregister in order to vote. If the change of address is permanent, please return the attached postage-paid postcard which will assist us in keeping our voter registration records accurate."

(e) The county clerk may send out an address confirmation to any voter when he or she receives unconfirmed information that the voter no longer resides at the address on the voter registration records. The county clerk shall follow the same confirmation procedure as set forth in subsection (d).

(f) Based on change of address information received pursuant to subsections (a) and (d) of this section, the permanent registrar shall:

(1) Update and correct the voter's registration if the information indicates that the voter has moved to a new address within the same county and the same congressional district;

(2) Designate the voter as inactive if the information indicates the voter has moved to a new address in another county or to a new address in another congressional district in the same county or if the address confirmation notices have been returned as undeliverable; or

(3) Cancel the voter registration in the county from which the voter has moved if the voter verifies in writing that he or she has moved to a residence address in another county. [As amended by Acts 1977, No. 882, § 1; 1991, No. 581, § 1; 1995, No. 947, § 6; 1995, No. 964, § 6; 1999, No. 1108, § 1; 2007, No. 560, § 1; 2009, No. 659, § 3.]

Amendments. The 2007 amendment in (a) inserted "or her" five times and inserted "or she" twice; added (b) and redesignated the remaining subsections accordingly; in (c), substituted "(d)(1)" for "(c)(1)," inserted "or her" and "or she"; in the second paragraph of (d)(2), substituted "transfer your registration" for "reregister at" and "transfer your registration" for "register to vote"; in (e), substituted "he or she receives" for "they receive" and substituted "(d)" for "(c)"; and substituted "(d)" for "(c)" in (f).

The 2009 amendment inserted "actually" in (b)(2)(A); substituted "not actually received by the fourth day" for "received

less than four days" in (b)(2)(B); and corrected an erroneous subsection designation in (f).

§ 11. Cancellation of registration.

(a) It shall be the duty of the permanent registrar to cancel the registration of voters:

(1) Who have failed to respond to address confirmation mailings described in section 10 of this amendment and have not voted or appeared to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for federal office that occurs after the date of the address confirmation notice;

(2) Who have changed their residence to an address outside the county;

(3) Who have died;

(4) Who have been convicted of a felony and have not discharged their sentence or been pardoned;

(5) Who are not lawfully qualified or registered electors of this state or of the county; or

(6) Who have been adjudged mentally incompetent by a court of competent jurisdiction.

(b) It shall be the duty of the permanent registrar of each county upon the registration of a person who has been registered previously in another county or state to notify promptly the permanent registrar of such other county or state of the new registration.

(c)(1) It shall be the duty of the State Registrar of Vital Records to notify promptly the Secretary of State of the death of all residents of this state.

(2)(A) The Secretary of State shall compile a listing of the deceased residents of this state and shall promptly provide this listing to the permanent registrar of each county.

(B) The deceased voter registration shall be cancelled by the permanent registrar.

(d)(1) It shall be the duty of the circuit clerk of each county upon the conviction of any person of a felony to notify promptly the permanent registrar of the county of residence of such convicted felon.

(2)(A) It is the duty of any convicted felon who desires to register to vote to provide the county clerk with proof from the appropriate state or local agency, or office that the felon has been discharged from probation or parole, has paid all probation or parole fees, or has satisfied all terms of imprisonment, and paid all applicable court costs, fines, or restitution.

(B) Proof that the felon has been discharged from probation or parole, paid all probation or parole fees, or satisfied all terms of imprisonment, and paid all applicable court costs, fines, or restitution shall be provided to the felon after completion of the probation,

parole, or sentence by the Department of Correction, the Department of Community Correction, the appropriate probation office or the circuit clerk as applicable.

(C) The circuit clerk or any other entity responsible for collection shall provide proof to the Department of Correction, the Department of Community Correction, or the appropriate probation office that the felon has paid all applicable court costs, fines, or restitution.

(D) Upon compliance with subdivision (d)(2)(A) of this section, the felon shall be deemed eligible to vote.

(e) Within ten (10) days following the receipt or possession of information requiring any cancellation of registration, other than under section 11(a)(1) of this amendment, the permanent registrar shall cancel the registration, note the date of the cancellation, the reason for the cancellation, and the person cancelling the registration.

(f)(1) The permanent registrar shall, thirty (30) days before cancellation, notify all persons whose registration records are to be cancelled in accordance with section 11(a)(1) of this amendment. The notice may be either by publication or by first class mail. The notice by mail shall be as follows:

"NOTICE OF IMPENDING CANCELLATION OF VOTER REGISTRATION.

According to our records you have not responded to our address confirmation notice and you have not voted in any election during the period beginning on the date of the notice and ending on the day after the date of the second general election for federal office after the date of the first notice. This may indicate that you no longer live at the residence address printed on the postcard. If your permanent residence address is still the same as the printed address on this postcard YOU MUST CONFIRM YOUR RESIDENCE ADDRESS in order to remain on the voter registration list. If you do not return the attached postcard within thirty (30) days after the date postmarked on this card YOUR REGISTRATION WILL BE CANCELLED and you will have to re-register to vote."

(2) When, in response to the notice, a qualified voter requests the permanent registrar not to cancel the voter registration, the voter registration shall not be cancelled under section 11(a)(1) of this amendment.

(g) The permanent registrar is authorized, and may be directed by the county board of registration, to determine by mail check, house to house canvass, or any other reasonable means at any time within the whole or any part of the county whether active record registration files contain the names of any persons not qualified by law to vote. Further, upon application based upon affidavits of one (1) or more qualified voters by the prosecuting attorney for the county, the circuit judge of the county, for good cause shown, may order the permanent registrar to make sure determination or to cancel the registration of such unqualified persons. [As amended by Acts 1977, No. 744, § 1; 1983, No. 11, § 1;

1987, No. 800, § 1; 1991, No. 581, § 2; 1995, No. 947, § 7; 1995, No. 964, § 7; 2001, No. 560, § 1; 2003, No. 271, § 1; 2003, No. 375, § 1; 2003, No. 1451, § 1; 2009, No. 659, § 4.]

Amendments. The 2009 amendment substituted "a felony" for "felonies" in (a)(4).

RESEARCH REFERENCES

Ark. L. Notes. Cihak, 2007 Election Law Issues, Legislation and Reforms, 2007 Ark. L. Notes 1.

AMEND. 55. REVISION OF COUNTY GOVERNMENT.

§ 3. Power of county judge.

CASE NOTES

Analysis

County Employees.
County Roads.

County Employees.

When a county judge entered into a collective bargaining agreement (CBA) with the union, the judge exercised his executive responsibility to provide county employees with other forms of compensation; therefore, the judge acted within his capacity to bind the county to the CBA and the county had an obligation to pay the insurance premiums for the county employees' dependents. AFSCME, Local 380 v. Hot Spring County, 362 F. Supp. 2d 1035 (W.D. Ark. 2004).

County Roads.

Trial court properly awarded an injunction to a partnership in its action for the removal of a large flower box that homeowners placed on the eastern end of a road in a subdivision because nothing that the trial court did invaded the county judge's province; the trial court declared, as it had the authority to do, that the homeowners could not obstruct a public road and interfere with the partnership's access to its property. Jones v. Juanita S. Wood Family Ltd. P'ship, 95 Ark. App. 326, 236 S.W.3d 573 (2006).

Where a county judge served as the principal executive officer of the county and his powers included operating the system of county roads and presiding over (but not voting in) the body that fixed the compensation of county officers, including the sheriff, but his position had no judicial duties and he had no authority, discretionary or otherwise, to order a person arrested, he could not directly participate in an unlawful arrest and, thus, was entitled to qualified immunity when he directed the county sheriff to arrest a truck driver after the driver's truck had caused a bridge to collapse under the truck's weight. Robinson v. White County, 452 F.3d 706 (8th Cir. 2006), aff'd in part, vac'd in part, 459 F.3d 900 (8th Cir. 2006).

AMEND. 59. TAXATION (CONST., ART. 16, § 5 REPEALED; §§ 5, 14, 15, 16 ADDED).

A.C.R.C. Notes. Acts 2005, No. 1242, § 1, provided: "(a) The Constitutional Issues Subcommittee of the House Interim Committee on State Agencies and Governmental Affairs and a subcommittee of the Senate Interim Committee on State Agencies and Governmental Affairs shall jointly conduct a study of property taxes relative to the impact of Amendments 59, 74, and 79 to the Arkansas Constitution.

"(b) The subcommittees shall complete the study and make their findings and

recommendations to the House Interim Committee on State Agencies and Governmental Affairs and the Senate Interim Committee on State Agencies and Governmental Affairs by October 31, 2006."

RESEARCH REFERENCES

Ark. L. Rev. Note, Attorneys' Windfalls and Society's Pitfalls: Butt v. Evans Law Firm, P.A., Attorneys' Fees in Class Action Suits Against Government Entities, 57 Ark. L. Rev. 627.

CASE NOTES

Subject-Matter Jurisdictions.

Taxpayer challenged a county's reappraisal of property for ad valorem tax purposes, but the taxpayer never challenged the legality of 1955 Ark. Acts 153, although the taxpayer's arguments effectively alleged that the county's reassessment and collection scheme was an unconstitutional violation of this amendment. Ad valorem taxes were legal in Arkansas, and the trial court lacked subject-matter jurisdiction over the matter. Hambay v. Williams, 373 Ark. 532, 285 S.W.3d 239 (2008).

AMEND. 62. LOCAL CAPITAL IMPROVEMENT BONDS.

§ 1. Local capital improvement bonds authorized — Election — Taxes — Limit on indebtedness — Suspension of tax levy.

(a) The legislative body of a municipality or county, with the consent of a majority of the qualified electors voting on the question at an election called for that purpose, may authorize the issuance of bonds for capital improvements of a public nature, as defined by the General Assembly, in amounts approved by a majority of those voting on the question either at an election called for that purpose or at a general election. The General Assembly shall prescribe a uniform method of calling and holding such elections and the terms upon which the bonds may be issued. If more than one purpose is proposed, each shall be stated separately on the ballot. The election shall be held no earlier than thirty (30) days after it is called by the legislative body. The tax to retire the bonds may be an ad valorem tax on real and personal property. Other taxes may be authorized by the General Assembly or the legislative body to retire the bonds.

(b) The limit of the principal amount of bonded indebtedness of the municipality or county which may be outstanding and unpaid at the time of issuance of any bonds secured by a tax on real or personal property, except for bonds issued for industrial development purposes pursuant to Section 2 hereof, shall be a sum equal to ten percent (10%) for a county or twenty percent (20%) for a municipality of the total assessed value for tax purposes of real and personal property in the county or municipality, as determined by the last tax assessment.

(c) The municipality or county may from time to time, suspend the collection of a levy, when not required for the payment of its bonds, subject to the covenants with the bondholders. (Amended by Amend.

89.)

Publisher's Notes. This amendment repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January 1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 (now Amend. 89) and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

Prior to amendment, the introductory language of subsection (a) read: "The legislative body of a municipality or county, with the consent of a majority of the qualified electors voting on the question at an election called for that purpose, may authorize the issuance of bonds, to bear interest at a rate not to exceed two percent (2%) per annum above the Federal Reserve Rate at the time of the election authorizing the bonds, for capital improvements of a public nature, as defined by the General Assembly, in amounts approved by a majority of those voting on the question either at an election called for that purpose or at a general election. The General Assembly shall prescribe a uniform method of calling and holding such elections and the terms upon which the bonds may be issued. If more than one purpose is proposed, each shall be stated separately on the ballot. The election shall be held no earlier than thirty (30) days after it is called by the legislative body. The tax to retire the bonds may be an ad valorem tax on real and personal property. Other taxes may be authorized by the General Assembly or the legislative body to retire the bonds."

AMEND. 64. [REPEALED.]

§ 1. [Repealed.]

Publisher's Notes. Sections 1 through 18, 20 through 22, 24, 25, 32, 34 (as amended by Ark. Const. Amend. 24, § 1), 35 (as amended by Ark. Const. Amend. 24, § 2), 39, 40, 42, 44, 45 and 50 of Ark. Const., Art. 7, were repealed by Ark. Const. Amend. 80, § 22, effective July 1, 2001. Ark. Const., Art. 7, § 43 was repealed effective January 1, 2005. Ark. Const. Amend. 58, § 1, was repealed effective July 1, 2001. Ark. Const. Amend. 64, § 1, is repealed by Ark. Const. Amend. 80, § 22(E), effective January 1, 2005. Ark. Const. Amend. 77, § 1, was repealed effective July 1, 2001.

AMEND. 65. REVENUE BONDS.

CASE NOTES

Facilities Boards.

City of Searcy, Arkansas, did not violate the First Amendment to the U.S. Constitution, this amendment, or Ark. Const., Art. 12, § 5 when it created a housing facilities board under the Arkansas Public Facilities Board Act (PFBA), § 14-137-101 et seq., and issued bonds so a university that was associated with the Churches of Christ could fund building projects. The PFBA allowed the housing facilities board to issue bonds to finance projects that had a public purpose, education was a public purpose, and neither the city nor the board acted with the purpose of advancing or inhibiting religion. Gillam v. Harding Univ., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 53609 (E.D. Ark. June 24, 2009).

§ 4. Authority exclusive — Interest — Initiative and referendum.

This amendment shall be the sole authority required for the authorization, issuance, sale, execution and delivery of revenue bonds authorized hereby. Nothing herein shall be construed to impair the initiative and referendum powers reserved to the people under Amendment No. 7 to the Constitution of the State of Arkansas. (Amended by Const. Amend. 89.)

Publisher's Notes. This amendment repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January 1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 (now Amend. 89) and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

Prior to amendment, this section read: "This amendment shall be the sole authority required for the authorization, issuance, sale, execution and delivery of revenue bonds authorized hereby; provided, however, that the rate of interest on revenue bonds shall not exceed the maximum authorized by Amendment No. 60 to the Constitution of the State of Arkansas or any similar provision hereafter adopted. Nothing herein shall be construed to impair the initiative and referendum powers reserved to the people under Amendment No. 7 to the Constitution of the State of Arkansas."

AMEND. 66. JUDICIAL DISCIPLINE AND DISABILITY COMMISSION

CASE NOTES

Analysis

Authority of Courts.
Hearings.

Authority of Courts.

As this amendment granted the Arkansas Supreme Court the power to remove a judge from the bench for judicial misconduct, the judge could not then seek election to judicial office. Proctor v. Daniels, 2010 Ark. 206, — S.W.3d — (2010).

Hearings.

Judge's petition for writ of mandamus to admit the public and news media to his formal probable-cause meeting was granted where, pursuant to Ark. Const. amend. 66, a hearing was contemplated before disciplining a judge by reprimand or censure; the judge had waived confidentiality and there was no countervailing reason to close the formal meeting. Griffen v. Arkansas Judicial Discipline & Disability Comm'n, 368 Ark. 557, 247 S.W.3d 816 (2007).

Cited: In re Davis, 358 Ark. 351, 189 S.W.3d 444 (2004).

AMEND. 68. ABORTION

Publisher's Notes. Enforcement of Amendment 68 is enjoined to the extent it prohibits the use of state funds to pay for abortions for Medicaid-eligible victims of rape or incest, for so long as federal law mandates Medicaid funding for abortions for Medicaid-eligible victims of rape or incest.

Material from this amendment is being set out to correct and update publisher's notes and case notes from the 2004 Replacement Volume.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, 49 Ark. L. Rev. 419.

CASE NOTES

Analysis

Constitutionality.
In General.
Enforcement Enjoined.
Enforcement Not Enjoined.
Medicaid.
Severability.

Constitutionality.

Section 1 of this amendment is inconsistent with the 1994 Hyde Amendment and therefore violates the Supremacy Clause. Little Rock Family Planning Servs. v. Dalton, 860 F. Supp. 609 (E.D. Ark. 1994), aff'd, Little Rock Family Planning Servs., P.A. v. Dalton, 60 F.3d 497 (8th Cir. 1995).

In General.

District court concluded that the Arkansas Supreme Court would extend its decision in Aka, which held that wrongful death suits could be brought on behalf of unborn, viable fetuses, to allow a negligence suit to be filed on a child's behalf, seeking to recover for alleged negligently-inflicted injuries that the child sustained in utero. The district court noted that the Arkansas Supreme Court had stated that Ark. Const., Amend. 68, § 2, continued to be a compelling expression of Arkansas' public policy to protect the lives of unborn children from the time of their conception until birth. Crussell v. Electrolux Home Prods., 499 F. Supp. 2d 1137 (W.D Ark. 2007).

Enforcement Enjoined.

There is no per se Amendment 68 violation when abortions are performed in a public hospital or by a public employee for patients who either paid for their abortions themselves or secured payment from a third-party provider. Unborn Child Amendment Comm. v. Ward, 328 Ark. 454, 943 S.W.2d 591 (1997).

Enforcement Not Enjoined.

This amendment is to be enjoined only to the extent that it imposes obligations inconsistent with federal law. Dalton v. Little Rock Family Planning Servs., 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

Medicaid.

Because this amendment was challenged insofar as it conflicted with 42 U.S.C. § 1396 et seq., it was improper to enjoin its application to funding that did not involve the Medicaid program. Dalton v. Little Rock Family Planning Servs., 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

With regard to Medicaid patients in situations involving rape or incest, this Amendment must give way to the Hyde Amendment to Title XIX as long as Arkansas participates in the Medicaid program and the current version of the Hyde Amendment remains in effect. Unborn Child Amendment Comm. v. Ward, 328 Ark. 454, 943 S.W.2d 591 (1997).

Severability.

In a preemption case, state law is displaced only to the extent that it actually conflicts with federal law; thus, because Ark. Const. Amend. 68, § 1, is not enjoined in cases other than where Medicaid-eligible rape and incest victims seek an abortion, §§ 2 and 3 subsist as well. Dalton v. Little Rock Family Planning Servs., 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

Cited: Chatelain v. Kelley, 322 Ark. 517, 910 S.W.2d 215 (1995); Ark. Dep't of Human Servs. v. Collier, 351 Ark. 506, 95 S.W.3d 772 (2003).

§ 1. Public funding.

RESEARCH REFERENCES

ALR. Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 118 A.L.R.5th 463.

U. Ark. Little Rock L.J. Note, Family Law — Child Custody — A Cryopreserved In Vitro Embryo Is a "Child" for Domestic Relations Purposes, 13 U. Ark. Little Rock L.J. 95.

CASE NOTES

Analysis

Constitutionality.
In General.
Construction.
Financing.

Constitutionality.

Section 1 of this amendment is inconsistent with the 1994 Hyde Amendment and therefore violates the Supremacy Clause. Little Rock Family Planning Servs. v. Dalton, 860 F. Supp. 609 (E.D. Ark. 1994), aff'd, Little Rock Family Planning Servs., P.A. v. Dalton, 60 F.3d 497 (8th Cir. 1995).

This section has been preempted by the Hyde Amendment with respect to Medicaid expenditures in cases of rape and incest. Hodges v. Huckabee, 338 Ark. 454, 995 S.W.2d 341 (1999).

In General.

To follow the federal Hyde Amendment, the state must establish two additional classes of funding under this section for Medicaid-eligible rape and incest victims. Little Rock Family Planning Servs. v. Dalton, 860 F. Supp. 609 (E.D. Ark. 1994), aff'd, Little Rock Family Planning Servs., P.A. v. Dalton, 60 F.3d 497 (8th Cir. 1995).

This amendment does not contain self-executing language withdrawing the state from participation in Medicaid rather than accepting federal limitations upon the scope of Medicaid coverage. Hodges v. Huckabee, 338 Ark. 454, 995 S.W.2d 341 (1999).

Construction.

It hardly seems possible that any other language could be used to explain more plainly or unambiguously the purpose or meaning of the phrase "to pay for any abortion"; very simply, in order for any entity to be in violation of this section, the following proof would have to be presented: (1) abortions were performed at the entity that were paid for with public funds; or (2) the entity paid for, with public funds, abortions that were performed elsewhere. Knowlton v. Ward, 318 Ark. 867, 889 S.W.2d 721 (1994).

The plain and unambiguous meaning of this section did not prohibit the testing, diagnosis, and counseling to families during the preconceptional, prenatal and postnatal periods performed at a genetics clinic. Knowlton v. Ward, 318 Ark. 867, 889 S.W.2d 721 (1994).

Financing.

The trial court did not err in determining that the direct and indirect costs of an abortion could be reasonably calculated and in ordering a public hospital to take all steps reasonably necessary to ensure that its charge covers the calculated costs so that the state does not effectively finance an abortion. Unborn Child Amendment Comm. v. Ward, 328 Ark. 454, 943 S.W.2d 591 (1997).

§ 2. Public policy.

RESEARCH REFERENCES

Ark. L. Rev. Allowing Fetal Wrongful Death Actions in Arkansas: A Death Whose Time Has Come?, 44 Ark. L. Rev. 465.

CASE NOTES

Analysis

In General.
Jurisdiction.

In General.

This section is not a self-executing provision that prohibits the state from engag-

ing in any activity that furthers or advances abortions. Knowlton v. Ward, 318 Ark. 867, 889 S.W.2d 721 (1994).

This section merely expresses the public policy of the state, but does not provide any means by which the policy is to be effectuated; therefore, it cannot be considered a self-executing provision. Knowlton v. Ward, 318 Ark. 867, 889 S.W.2d 721 (1994).

Jurisdiction.

Juvenile court was without jurisdiction to enter any order affecting a minor's right to have or not to have an abortion. Juvenile H. v. Crabtree, 310 Ark. 208, 833 S.W.2d 766 (1992).

§ 3. Effect of amendment.

CASE NOTES

Analysis

Construction.
Severability.

Construction.

This Amendment does not erect a per se bar to abortions performed in a public hospital by a public employee where patients pay for the cost in advance or furnish guarantee of payment by a third-party provider. Unborn Child Amendment Comm. v. Ward, 328 Ark. 454, 943 S.W.2d 591 (1997).

Severability.

In a preemption case, state law is displaced only to the extent that it actually conflicts with federal law; thus, because Ark. Const. Amend. 68, § 1, is not enjoined in cases other than where Medicaid-eligible rape and incest victims seek an abortion, §§ 2 and 3 subsist as well. Dalton v. Little Rock Family Planning Servs., 516 U.S. 474, 116 S. Ct. 1063, 134 L. Ed. 2d 115 (1996).

AMEND. 73. ARKANSAS TERM LIMITATION AMENDMENT.

§ 3. Congressional Delegation.

RESEARCH REFERENCES

ALR. Construction and Application of Elections Clause of United States Constitution, U.S. Const. Art. I, § 4, cl.1, and State Constitutional Provisions Concerning Congressional Elections. 34 A.L.R.6th 643.

AMEND. 74. SCHOOL TAX — BUDGET — APPROVAL OF TAX RATE (CONST., ART. 14, § 3, AS AMENDED BY CONST. AMEND. 11 AND CONST. AMEND. 40, AMENDED).

A.C.R.C. Notes. Acts 2005, No. 1242, § 1, provided: "(a) The Constitutional Issues Subcommittee of the House Interim Committee on State Agencies and Governmental Affairs and a subcommittee of the Senate Interim Committee on State Agencies and Governmental Affairs shall jointly conduct a study of property taxes relative to the impact of Amendments 59, 74, and 79 to the Arkansas Constitution.

"(b) The subcommittees shall complete the study and make their findings and recommendations to the House Interim Committee on State Agencies and Governmental Affairs and the Senate Interim Committee on State Agencies and Governmental Affairs by October 31, 2006."

RESEARCH REFERENCES

Ark. L. Rev. Lessons From Lake View: Some Questions and Answers from Lake View School District No. 25 v. Huckabee, 56 Ark. L. Rev. 519 (2003).

U. Ark. Little Rock L. Rev. Note, Constitutional Law — Education and Equal Protection — Towards Intelligence and Virtue: Arkansas Embarks on a Court-Mandated Search for an Adequate and Equitable School Funding System. Lake View School District No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002), 26 U. Ark. Little Rock L. Rev. 143 (2003).

CASE NOTES

In General.

In a City's challenge to the County Assessor's allocation of millage rates, Ark. Const. amend. 78 did not repeal the uniform rate of 25 mills to be used for maintenance and operation of the schools as provided under Ark. Const. amend. 74 as the voters were never put on notice that redevelopment projects would be funded with a portion of the uniform rate of 25 mills that had previously been designated solely for the maintenance and operation of the public school. Furthermore, an invincible repugnancy between the amendments did not exist so as to cause a repeal by implication. City of Fayetteville v. Wash. County, 369 Ark. 455, 255 S.W.3d 844 (2007).

AMEND. 76. THE CONGRESSIONAL TERM LIMITS AMENDMENT OF 1996 (CONST. AMEND. 73, § 3, AMENDED).

§ 1. Congressional Delegation (Const. Amend. 73, § 3 amended).

RESEARCH REFERENCES

ALR. Construction and Application of Elections Clause of United States Constitution, U.S. Const. Art. I, § 4, cl.1, and State Constitutional Provisions Concerning Congressional Elections. 34 A.L.R.6th 643.

AMEND. 78. [CITY AND COUNTY GOVERNMENT REDEVELOPMENT].

CASE NOTES

In General.

In a City's challenge to the County Assessor's allocation of millage rates, Ark. Const. amend. 78 did not repeal the uniform rate of 25 mills to be used for maintenance and operation of the schools as provided under Ark. Const. amend. 74 as the voters were never put on notice that redevelopment projects would be funded with a portion of the uniform rate of 25 mills that had previously been designated solely for the maintenance and operation of the public school. Furthermore, an invincible repugnancy between the amendments did not exist so as to cause a repeal by implication. City of Fayetteville v. Wash. County, 369 Ark. 455, 255 S.W.3d 844 (2007).

§ 2. [Short-term financing obligations].

(a) For the purpose of acquiring, constructing, installing or renting real property or tangible personal property having an expected useful life of more than one (1) year, municipalities and counties may incur short-term financing obligations maturing over a period of, or having a

term, not to exceed five (5) years. Such obligations may bear interest.

(b) As used here:

(1) "Short-term financing obligation" means a debt, a note, an installment purchase agreement, a lease, a lease-purchase contract, or any other similar agreement, whether secured or unsecured; provided, that the obligation shall mature over a period of, or have a term, not to exceed five (5) years.

(c) The provisions of this section shall be self-executing. (Amended by Const. Amend. 89.)

Publisher's Notes. This amendment repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January 1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 (now Amend. 89) and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

Prior to amendment, this section read:

"(a) For the purpose of acquiring, constructing, installing or renting real property or tangible personal property having an expected useful life of more than one (1) year, municipalities and counties may incur short-term financing obligations maturing over a period of, or having a term, not to exceed five (5) years. Such obligations may bear interest at either:

"(1) a fixed rate throughout the term thereof, including a fixed interest rate which is to be determined by reference to an index or other formula, but not to exceed the maximum lawful rate of interest for fixed rate obligations, or

"(2) a rate which may vary at such times and under such circumstances as the parties may agree, whether or not the interest rate in fact varies, but not to exceed the maximum lawful rate of interest for variable rate obligations. The maximum lawful rate of interest for fixed rate obligations is the formula rate in effect on the date the obligation is incurred, regardless of when such interest is to begin to accrue. The maximum lawful rate of interest for variable rate obligations is the formula rate in effect on the date such interest accrues. The aggregate principal amount of short-term financing obligations incurred by a municipality or a county pursuant to this section shall not exceed five percent (5%) of the assessed value of taxable property located within the municipality or two and one half percent (2.5%) of the assessed value of taxable property located within the county, as determined by the last tax assessment completed before the last obligation was incurred by the city or county. The total annual principal and interest payments in each fiscal year on all outstanding obligations of a municipality or a county pursuant to this section shall be charged against and paid from the general revenues for such fiscal year, which may include road fund revenues. Tax revenues earmarked for solid waste disposal purposes may be used to pay printing and other costs associated with bonds issued under this amendment for solid waste disposal purposes.

"(b) As used here:

"(1) "Short-term financing obligation" means a debt, a note, an installment purchase agreement, a lease, a lease-purchase contract, or any other similar agreement, whether secured or unsecured; provided, that the obligation shall mature over a period of, or have a term, not to exceed five (5) years;

"(2) "Formula rate" means that rate of interest which is five percentage points (5%) above the equivalent bond yield of one year United States Treasury Bills offered by the United States Treasury at the last auction during the immediately preceding calendar quarter, calculated by rounding up to the nearest one-fourth of one percentage point (0.25%) (unless the equivalent bond yield is already by a multiple of one-fourth of one percentage point), and announced by the State Bank Commissioner (or such successor official who may be performing substantially the same duties) from information available from the Federal Reserve System of the United States. The calculation of the formula rate shall be made on or before the tenth (10th) day of each calendar quarter.

The formula rate so calculated shall be effective on the eleventh (11th) day of the calendar quarter and shall continue in effect until the formula rate for the succeeding calendar quarter shall have been calculated and becomes effective. If, for any reason, the United States ceases to issue one year Treasury Bills, such calculation shall be made using a debt instrument of the United States having substantially the same general character and maturity. The calculation and announcement of the formula rate by the State Bank Commissioner shall be final.

"(c) The provisions of this section shall be self-executing."

AMEND. 79. [PROPERTY TAX RELIEF].

A.C.R.C. Notes. Acts 2005, No. 1242, § 1, provided: "(a) The Constitutional Issues Subcommittee of the House Interim Committee on State Agencies and Governmental Affairs and a subcommittee of the Senate Interim Committee on State Agencies and Governmental Affairs shall jointly conduct a study of property taxes relative to the impact of Amendments 59, 74, and 79 to the Arkansas Constitution.

"(b) The subcommittees shall complete the study and make their findings and recommendations to the House Interim Committee on State Agencies and Governmental Affairs and the Senate Interim Committee on State Agencies and Governmental Affairs by October 31, 2006."

AMEND. 80. [QUALIFICATIONS OF JUSTICES AND JUDGES].

RESEARCH REFERENCES

Ark. L. Rev. First National Bank of Dewitt v. Cruthis: An Analysis of the Right to a Jury Trial in Arkansas After the Merger of Law and Equity, 60 Ark. L. Rev. 563.

CASE NOTES

Analysis

Collateral Source Rule.
Jurisdiction.
Jury Trial.

Collateral Source Rule.

Court granted plaintiff's motion challenging the Arkansas Civil Justice Reform Act of 2003, § 16-55-212(b), and allowed plaintiff to introduce evidence of the amounts billed to her for medical services necessitated by the injuries that were the subject of her lawsuit, regardless of any discount that she had received on those amounts because (1) if the Arkansas Supreme Court were considering the constitutionality of § 16-55-212(b), it would hold that § 16-55-212(b) infringed on its constitutional prerogative to prescribe rules of evidence under Ark. Const., Amend. 80, § 3, and was, therefore, unconstitutional because § 16-55-212(b) would, if enforced, work a reversal of the collateral source rule that had been recognized and approved by the Arkansas Supreme Court, yet the Arkansas Supreme Court did not "prescribe" § 16-55-212(b), and (2) the Arkansas Supreme Court would, if presented with the instant motion, find that § 16-55-212(b) violated Ark. Const., Art. V, § 32 as the Arkansas Supreme Court had held that a personal injury plaintiff was entitled, assuming a successful showing of liability, to recover the payments made (or written off) on her behalf by a collateral source, but § 16-55-212(b) would prevent her from doing that. Burns v. Ford Motor Co., 549 F. Supp. 2d 1081 (W.D. Ark. 2008).

Jurisdiction.

After petitioner special prosecutors of Division 3 filed a report regarding their investigation into possible criminal conduct involving the death of a civilian by a police officer, Division 6 did not have authority to call a special grand jury to investigate the incident as Division 3 had exclusive jurisdiction because it had already acted by appointing special prosecu-

tors to investigate before Division 6 issued its order to call a special grand jury. Foster v. Hill, 372 Ark. 263, 275 S.W.3d 151 (2008).

After petitioner special prosecutors of Division 3 filed a report regarding their investigation into possible criminal conduct involving the death of a civilian by a police officer, Division 6 did not have authority to call a special grand jury to investigate the incident as Division 3 had exclusive jurisdiction because it had already acted by appointing special prosecutors to investigate before Division 6 issued its order to call a special grand jury. Under its superintending control, the supreme court could not allow coordinate divisions of a single circuit to compete for control of processes investigating possible criminal acts; Division 3 assumed jurisdiction first and thus held exclusive jurisdiction. Foster v. Hill, 372 Ark. 263, 275 S.W.3d 151 (2008).

In a wrongful death action filed by the decedent's son against the hospital and doctors, summary judgment in favor of the doctors and hospital was improper as the circuit court usurped the authority of the probate court under this amendment by its ruling that the son's appointment as personal representative of his father's estate was void. Edwards v. Nelson, 372 Ark. 300, 275 S.W.3d 158 (2008).

This amendment, which was in effect when the circuit court ruled on the matters at issue, merged circuit and chancery courts into circuit courts so that circuit courts would have jurisdiction over all matters previously cognizable in circuit, chancery, probate, and juvenile courts; the circuit judge was empowered to hear all matters within the jurisdiction of the circuit court, which included probate matters. Ferguson v. Ferguson, 2009 Ark. App. 549, 334 S.W.3d 425 (2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 837 (Dec. 17, 2009).

Writ of prohibition was not available where the circuit court had subject matter jurisdiction, even though it was alleged that the plaintiffs in the underlying action lacked standing, because the issue of standing was not a question of subject matter jurisdiction, and § 6(A) of this amendment did not alter the jurisdiction of law and equity. Chubb Lloyds Ins. Co. v. Miller County Circuit Court, 2010 Ark. 119, — S.W.3d — (2010).

Jury Trial.

Trial court erred in submitting a bank's foreclosure and fraudulent-transfer claims to a jury because foreclosure was a strictly equitable remedy and adoption of this amendment neither altered the jurisdiction of law and equity nor expanded a party's right to a jury trial on a claim that would normally lie in equity; the clean-up doctrine was still viable after the adoption of this amendment. Nat'l Bank of Ark. v. River Crossing Partners, LLC, 2010 Ark. App. 841, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2011 Ark. App. LEXIS 33 (Jan. 19, 2011).

Cited: Cato v. Craighead County Circuit Court, 2009 Ark. 334, 322 S.W.3d 484 (2009); Kuelbs v. Hill, 2010 Ark. App. 427, — S.W.3d — (2010).

§ 2. Supreme Court.

CASE NOTES

Habeas Corpus.

Arkansas Supreme Court Rules determine the Court of Appeals' jurisdiction and caseload, whereas the Arkansas Constitution establishes the Supreme Court's jurisdiction and authority to establish rules governing which cases it will review; for federal habeas purposes, the Arkansas Supreme Court (not the Court of Appeals) is the "court of last resort" in Arkansas. Parmley v. Norris, 586 F.3d 1066 (8th Cir. 2009).

§ 3. Rules of pleading, practice, and procedure.

CASE NOTES

Analysis

Bypassing Rules of Pleading, Practice, and Procedure.

Section 16-55-202 was unconstitutional and conflicted with Ark. Const., Art. 4, § 2 and this section because rules regarding pleading, practice, and procedure were solely the responsibility of the supreme court; the nonparty-fault provision bypassed the rules of pleading, practice, and procedure by setting up a procedure to determine the fault of a nonparty and mandating the consideration of that nonparty's fault in an effort to reduce a plaintiff's recovery. Thomas v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).

Habeas Corpus.

Arkansas Supreme Court Rules determine the Court of Appeals' jurisdiction and caseload, whereas the Arkansas Constitution establishes the Supreme Court's jurisdiction and authority to establish rules governing which cases it will review; for federal habeas purposes, the Arkansas Supreme Court (not the Court of Appeals) is the "court of last resort" in Arkansas. Parmley v. Norris, 586 F.3d 1066 (8th Cir. 2009).

Malpractice Proceedings.

The constitutional infirmity in § 16-114-209(b) is the provision for dismissal if an affidavit does not accompany a complaint within thirty days; therefore, a decision to dismiss a medical malpractice action for failing to file such an affidavit was reversed on appeal since this conflicted with Ark. R. Civ. P. 3 and Ark. Const. amend. 80, § 3. Summerville v. Thrower, 369 Ark. 231, 253 S.W.3d 415 (2007).

Mandate to Prescribe the Rules of Procedure.

Once the requirements of § 14-51-308(e)(1)(B) have been met, an appeal from a decision of the civil service commission to circuit court should proceed in accordance with the rules of the court governing an appeal from inferior courts; thus, a party appealing a decision of the civil service commission has, pursuant to Ark. Inferior Ct. R. 9(c), thirty days from the entry of the commission's written decision to file a record with the circuit court. Barrows v. City of Fort Smith, 2010 Ark. 73, — S.W.3d — (2010).

Province of the Supreme Court.

Medical-costs provision, § 16-55-212(b) violated separation of powers under Ark. Const., Art. 4, § 2 and this section because rules regarding the admissibility of evidence were within the province of the supreme court. Thomas v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).

§ 4. Superintending control.

CASE NOTES

Habeas Corpus.

Arkansas Supreme Court Rules determine the Court of Appeals' jurisdiction and caseload, whereas the Arkansas Constitution establishes the Supreme Court's jurisdiction and authority to establish rules governing which cases it will review; for federal habeas purposes, the Arkansas Supreme Court (not the Court of Appeals) is the "court of last resort" in Arkansas. Parmley v. Norris, 586 F.3d 1066 (8th Cir. 2009).

§ 5. Court of Appeals.

CASE NOTES

Habeas Corpus.

Arkansas Supreme Court Rules determine the Court of Appeals' jurisdiction and caseload, whereas the Arkansas Constitution establishes the Supreme Court's jurisdiction and authority to establish rules governing which cases it will review; for federal habeas purposes, the Arkansas Supreme Court (not the Court of Appeals) is the "court of last resort" in Arkansas. Parmley v. Norris, 586 F.3d 1066 (8th Cir. 2009).

§ 6. Circuit courts.

CASE NOTES

Analysis

Authority.
Child Custody.
Equitable Lien.
Jurisdiction.
Jury Trial.

Authority.

Writ of prohibition was denied in a case challenging the constitutionality of § 16-7-202(b) because a circuit court had jurisdiction to hear a motion relating to estate administration due to subdivision (A) of this section, and the constitutionality of a statute could have been heard by a circuit court and appealed. Ellis v. Reynolds, 368 Ark. 572, 247 S.W.3d 845 (2007).

Child Custody.

Order denying adoption petitions, treating the matter as a custody issue, and awarding custody of a child to appellees was upheld as the trial court had the power to determine custody after it dismissed the adoption petitions; the issue of custody was before the trial court because appellees had requested custody of the child, as well as the right to adopt her. Smith v. McCracken, 96 Ark. App. 270, 240 S.W.3d 621 (2006).

Equitable Lien.

Circuit court may exercise any act of jurisdiction that either a court of law or equity could have exercised prior to Ark. Const., Amend. 80, and the designation of an action as a specific type of action does not prevent a circuit court from hearing any matter within the court's jurisdiction that is properly raised to the court. Smith v. McCracken, 96 Ark. App. 270, 240 S.W.3d 621 (2006).

Where a creditor sought, among other things, an equitable lien in count one of its amended complaint, the circuit court erred in submitting the claim to a jury. First Nat'l Bank of Dewitt v. Cruthis, 360 Ark. 528, 203 S.W.3d 88 (2005).

Jurisdiction.

Where the trial court accepted appellant's plea for capital-felony murder on a Sunday in violation of § 16-10-114, the statutory violation did not affect the trial court's jurisdiction over the matter under this section, and Ark. Const., Amend. 80, § 19. Noble v. Norris, 368 Ark. 69, 243 S.W.3d 260 (2006).

In a case in which two insurance companies sought a writ of prohibition ordering a circuit court to dismiss the claims alleged against them in a proposed nationwide class action against numerous insurance companies, they unsuccessfully argued that subdivision (A) of this section of this amendment granted circuit courts jurisdiction over only justiciable matters, and that following the removal of plaintiff insured's claims to bankruptcy court and the dismissal of those claims due to his death, there remained no plaintiffs who had an insurance contract with them who could assert a justiciable matter against it in the circuit court. Standing was not a question of subject-matter jurisdiction, and this amendment did not change that. Foremost Ins. Co. v. Miller County Circuit Court, Third Div., 2010 Ark. 116, — S.W.3d — (2010).

As the criminal division of the circuit court lost its exclusive jurisdiction over a juvenile's case when it transferred the case to the juvenile division pursuant to

§ 9-27-318, the criminal division lacked authority to later set aside its transfer order, and that order was a nullity. C.H. v. State, 2010 Ark. 279, — S.W.3d — (2010).

Jury Trial.

The right to a jury trial set out in Ark. Const., Art. 2, § 7 is unaffected by Ark. Const., Amend. 80 as section 7 does not assure the right to a jury trial in all possible instances, but rather in those cases where the right to a jury trial existed when the constitution was framed; further, the right to a jury trial does not apply to new rights created by the legislature since the adoption of the Arkansas Constitution. First Nat'l Bank of Dewitt v. Cruthis, 360 Ark. 528, 203 S.W.3d 88 (2005).

§ 10. Jurisdiction, venue, circuits, districts and number of judges.

CASE NOTES

Analysis

Authority of Judge.
Repeal by Implication.

Authority of Judge.

Adoption of both § 16-17-929 and this amendment did not affect the validity of Brenk v. State, 311 Ark. 579, 847 S.W.2d 1, 1993 Ark. LEXIS 60 (1993), which allowed search warrants to be issued by any judicial officer, regardless of the county in which the judicial officer was elected or appointed. Wagner v. State, 2010 Ark. 389, — S.W.3d — (2010).

Repeal by Implication.

Section 16-55-213(a) repealed by implication an older venue statute, § 16-60-116(a): § 16-55-213(a) established a new general rule for venue different from the former rule, creating an irreconcilable conflict, and § 16-55-213(a)' s reference to "all civil actions" demonstrated an intent to adopt a new venue scheme. Dotson v. City of Lowell, 375 Ark. 89, 289 S.W.3d 55 (2008).

§ 16. Qualifications and terms of justices and judges.

CASE NOTES

Judicial Qualifications.

Section 16-13-104 is unconstitutional as it conflicts with Ark. Const. Amend. 80, § 16, which governs judicial qualifications; thus, a circuit court judge cannot run for election for another judicial position. Daniels v. Dennis, 365 Ark. 338, 229 S.W.3d 880 (2006).

AMEND. 81. [PROTECTION OF THE SECRECY OF INDIVIDUAL VOTES (CONST., AMEND. 50, § 3 REPEALED)].

CASE NOTES

Application.

Circuit court erred to the extent that it based its decision to grant the dismissal on the failure of the claimant to prove specifically how each challenged voter voted, because without question, the claimant should not have been required to present tracing evidence of how each challenged voter voted when he was foreclosed from doing so by this amendment. While this amendment protected the secrecy of ballots, its intent was to protect an honest voter, not an illegal one, and in election contests in which there was evidence of an illegal ballot, the person who illegally voted could be forced to testify as to whom they voted and such was permissible under this amendment. Willis v. Crumbly, 371 Ark. 517, 268 S.W.3d 288 (2007).

AMEND. 82. [OBLIGATION BONDS FOR ECONOMIC DEVELOPMENT].

(a) In order for the State of Arkansas to effectively compete for large economic development projects, the Arkansas General Assembly, meeting in special or regular session, may authorize the Arkanas Development Finance Authority to issue general obligation bonds to finance infrastructure or other needs to attract large economic development projects.

(b) Bonds may be issued for an amount up to five percent (5%) of state general revenues collected during the most recent fiscal year.

(c) Infrastructure needs may include, but are not limited to:

(1) Land acquisition;

(2) Site preparation;

(3) Road and highway improvements;

(4) Rail spur construction; water service;

(5) Wastewater treatment;

(6) Employee training which may include equipment for such purpose;

(7) Environmental mitigation; and

(8) Training and research facilities and the necessary equipment therefore.

(d) The General Assembly may authorize the issuance of bonds bearing the full faith and credit of the State of Arkansas if the prospective employer planning an economic development project is eligible under criteria established by law.

(e) The bonds shall be paid for in full by general or special revenues appropriated by the General Assembly until the bonds have been retired and all obligations associated with the issuance of the bonds have been met.

(f) Bonds may be issued under this amendment pursuant to an act of the General Assembly without voter approval. (Amended by Const. Amend. 90.)

Publisher's Notes. The bracketed heading was added by the Publisher.

This amendment was proposed by H.J.R. 1028 during the 2003 Regular Session and adopted at the November 2004 general election.

This amendment, effective January 1, 2011, was proposed by H.J.R. 1007 (now Amend. 90) and was adopted at the 2010 general election by a vote of 431,724 for and 260,735 against.

Prior to this amendment, subsection (d) read: "In order for the General Assembly to authorize the issuance of bonds bearing the full faith and credit of the State of Arkansas, the prospective employer must be planning an economic development project that will invest more than five hundred million dollars ($500,000,000) in capital expenditures and plan on hiring over five hundred (500) new employees."

AMEND. 83. [MARRIAGE].

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 1. Marriage.

Marriage consists only of the union of one man and one woman.

§ 2. Marital status.

Legal status for unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized in Arkansas, except that the legislature may recognize a common law marriage from another state between a man and a woman.

§ 3. Capacity, rights, obligations, privileges, and immunities.

The legislature has the power to determine the capacity of persons to marry, subject to this amendment, and the legal rights, obligations, privileges, and immunities of marriage.

Publisher's Notes. This amendment was adopted at the November 2004 general election and approved by a vote of 753,770 for and 251,914 against.

AMEND. 84. [AUTHORIZED BINGO OR RAFFLES].

(a) As used in this section:

(1) "Authorized bingo and raffles organization" means a nonprofit tax-exempt religious, educational, veterans, fraternal, service, civic, medical, volunteer rescue service, volunteer firefighters organization, or volunteer police organization that has been in continuing existence as a nonprofit tax-exempt organization in this state for a period of not less than five (5) years immediately prior to conducting the game of bingo or raffles;

(2)(A) "Game of bingo" means a single game of the activity commonly known as "bingo" in which the participants pay a sum of money for the use of one (1) or more bingo cards.

(B) "Game of bingo" shall include only games in which the winner receives a preannounced, fixed-dollar prize and in which the winner is determined by the matching of letters and numbers on a bingo card imprinted with at least twenty-four (24) numbers, with letters and numbers appearing on objects randomly drawn and announced by a caller, in contemporaneous competition among all players in the game; and

(3) "Raffle" means the selling of tickets or chances to win a prize awarded through a random drawing.

(b)(1) The game of bingo or raffles conducted by an authorized bingo and raffles organization shall not be a lottery prohibited by Section 14 of Article 19 of the Arkansas Constitution if all net receipts over and above the actual cost of conducting the game or raffle are used only for charitable, religious, or philanthropic purposes.

(2) No receipts shall be used to compensate in any manner any person who works for or is in any way affiliated with the authorized

bingo and raffles organization.

(c) The General Assembly shall provide by law for the licensure and regulation of authorized bingo and raffles organizations to conduct the game or bingo or raffles and may levy taxes on the activities.

Publisher's Notes. This amendment, effective January 1, 2007, was adopted at the November 2006 general election and approved by a vote of 503,216 for and 226,844 against.

AMEND. 85. [VOTING AND ELECTIONS AMENDMENT (CONST. AMENDS. ART. 3, §§ 1, 2, 8 AND 10 AMENDED, CONST. ART. 3, § 5 REPEALED)].

Publisher's Notes. The bracketed heading was added by the Publisher.

This amendment amended Ark. Const., Art. 3, §§ 1, 2, repealed Ark. Const., Art. 3, § 5, and amended Ark. Const., Art. 3, §§ 8 and 10. The amendments to those sections, effective January 1, 2009, are incorporated within those sections. The amendment was proposed by S.J.R. 4 and was adopted at the 2008 general election by a vote of 714,128 for and 267,326 against.

AMEND. 86. [GENERAL ASSEMBLY SESSIONS (CONST. AMENDS. ART. 5, §§ 5, 17, 29, 34, 39, 40 AND AMEND. 35, § 7 AMENDED)].

Publisher's Notes. The bracketed heading was added by the Publisher.

This amendment amended Ark. Const., Art. 5, §§ 5, 17, 29, 34, 39, 40, and Ark. Const., Amend. 35, § 7. The amendments to those sections, effective January 1, 2009, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 and was adopted at the 2008 general election by a vote of 664,671 for and 292,436 against.

AMEND. 87. [STATE LOTTERY ESTABLISHED (CONST. AMENDS. ART. 19, § 14 AMENDED)].

Publisher's Notes. The bracketed heading was added by the Publisher.

This amendment amended Ark. Const., Art. 19, § 14. The amendment to that section, effective January 1, 2009, is incorporated within that section. The amendment was proposed by an initiated measure and was adopted at the 2008 general election by a vote of 648,122 for and 383,467 against.

AMEND. 88. [WILDLIFE CONSERVATION AND MANAGEMENT].

Publisher's Notes. The bracketed heading was added by the Publisher.

This amendment, effective January 1, 2011, was proposed by S.J.R. 3 and was adopted at the 2010 general election by a vote of 612,495 for and 127,444 against.

§ 1. [Right to Hunt, Fish, Trap, and Harvest Wildlife]

(a)(1) Citizens of the State of Arkansas have a right to hunt, fish, trap, and harvest wildlife.

(2) The right to hunt, fish, trap, and harvest wildlife shall be subject

only to regulations that promote sound wildlife conservation and management and are consistent with Amendment 35 of the Arkansas Constitution.

(b) Public hunting, fishing, and trapping shall be a preferred means of managing and controlling nonthreatened species and citizens may use traditional methods for harvesting wildlife.

(c) Nothing in this amendment shall be construed to alter, repeal, or modify:

(1) Any provision of Amendment 35 to the Arkansas Constitution;

(2) Any common law or statute relating to trespass, private property rights, eminent domain, public ownership of property, or any law concerning firearms unrelated to hunting; or

(3) The sovereign immunity of the State of Arkansas.

Publisher's Notes. The bracketed heading was added by the Publisher.

AMEND. 89. [GOVERNMENTAL BONDS AND LOANS — INTEREST RATES — ENERGY EFFICIENCY PROJECTS (CONST. ART. 19, § 13 REPEALED, CONST. AMEND. 30, § 5, AMEND. 38, § 5, AMEND. 62, § 1, AMEND. 65, § 4, AND AMEND. 78, § 2 AMENDED)].

Publisher's Notes. The bracketed heading was added by the Publisher.

This amendment repealed Ark. Const., Art. 19, § 13 and amended Ark. Const., Amend. 30, § 5, Amend. 38, § 5, Amend. 62, § 1, Amend. 65, § 4, and Amend. 78, § 2. The amendments to those sections, effective January 1, 2011, are incorporated within those sections. The amendment was proposed by H.J.R. 1004 and was adopted at the 2010 general election by a vote of 448,711 for and 250,167 against.

§ 1. Governmental Bonds and Loans.

(a) The maximum lawful rates of interest on bonds issued by governmental units in the State of Arkansas as set forth in various provisions and amendments to the Arkansas Constitution of 1874, including Article 19, § 13, and Amendment Nos. 30, 38, 62, 65, and 78 are removed.

(b) The maximum lawful rate of interest on loans made by or to governmental units in the State of Arkansas as set forth in Article 19, § 13 of the Arkansas Constitution of 1874 is removed.

(c) Except as may be established by the General Assembly pursuant to Section 8 of this amendment, there shall be no maximum lawful rate on bonds issued by and loans made by or to governmental units.

§ 2. Loans by Federally Insured Depository Institutions.

The maximum lawful rate of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved from time to time in any loan or financing transaction by or to any federally insured depository institution having its main office in

this State shall be the maximum rate of interest that was applicable to federally insured depository institutions under 12 U.S.C. § 1831u effective on March 1, 2009.

§ 3. Other Loans.

The maximum lawful rate of interest on loans or contracts not described in Sections 1 and 2 shall not exceed seventeen percent (17%) per annum.

§ 4. Energy Efficiency Project Bonds – Issuance – Terms and Conditions.

(a) A governmental unit, under laws adopted by the General Assembly, may issue bonds to finance all or a portion of the costs of energy efficiency projects. The bonds may bear such terms, be issued in such manner, and be subject to such conditions as may be authorized by the General Assembly. The bonds authorized by Section 4 shall be governmental bonds subject to the provisions of Section 1 of this amendment.

(b) Bonds may be secured by a pledge of the savings from the energy efficiency project and may be repaid from general revenues, special revenues, revenues derived from taxes or any other revenues available to the governmental unit.

(c) The authority conferred by this Section 4 shall be supplemental to other constitutional provisions which authorize the issuance of bonds.

§ 5. Definitions.

(a) The term "bonds" means all bonds, notes, certificates, financing leases, or other interest-bearing instruments or evidences of indebtedness.

(b) The term "Federal Reserve Primary Credit Rate" means the Primary Credit Rate, or such successor rate, as established by and in effect in the Federal Reserve Bank in the Federal Reserve District in which Arkansas is located.

(c) The term "federally insured depository institution" means a state bank, a national bank, or a savings association, as such terms are defined in 12 U.S.C. § 1813 as such statute existed on January 1, 2009, the deposits of which are insured by the Federal Insurance Deposit Corporation, or its successor.

(d) The term "governmental unit" means the State of Arkansas; any county, municipality, school district, or other political subdivision of the State of Arkansas; any special assessment or taxing district established under the laws of the State of Arkansas; and any agency, board, commission, or instrumentality of any of the foregoing.

(e) The term "loan or financing transaction by or to a federally insured depository institution" means all direct or indirect advances of funds and moneys that are conditioned on the obligation of a person or entity to repay the funds and moneys pursuant to loan agreements,

lease agreements, installment sale agreements, security agreements, notes, bill of exchange, or other evidence of debt or other instruments or documents evidencing the indebtedness and are made by or to a federally insured depository institution.

(f) The term "loans made by or to governmental units" means all direct or indirect advances of funds and moneys that are conditioned on the obligation of a person or entity to repay the funds and moneys pursuant to loan agreements, lease agreements, installment sale agreements, security agreements, notes, or other instruments or documents evidencing the indebtedness and are made by or to governmental units.

A.C.R.C. Notes. While the definition of "bank" at 12 U.S.C. § 1813 includes the term "national bank", "national bank" is not defined at that section. Also, although the section contains references to "state savings associations" and "federal savings associations", those terms and the term "savings association" are not defined in the section.

§ 6. Miscellaneous.

(a) The provisions of this amendment are not intended and shall not be deemed to supersede or otherwise invalidate any provisions of federal law applicable to loans or interest rates including loans secured by residential real property.

(b) All contracts under Section 3 having a rate of interest in excess of the maximum lawful rate shall be void as to principal and interest and the General Assembly shall prohibit the same by law.

§ 7. [Ballot Title]

The ballot title for this amendment shall be:

An amendment providing that constitutional provisions setting the maximum lawful rate of interest on bonds issued by and loans made by or to governmental units are repealed; the maximum lawful rate of interest on loans by federally insured depository institutions shall remain at the rate resulting from the federal preemption effective on March 1, 2009; establishing that the maximum lawful rate of interest on any other loan or contract shall not exceed seventeen percent (17%) per annum; authorizing governmental units to issue bonds to finance energy efficiency projects and allowing such bonds to be repaid from any source including general revenues derived from taxes; providing that any federal laws applicable to loans or interest rates are not superseded by the amendment; and repealing Article 19, § 13, and the interest rate provisions of Amendment Nos. 30, 38, 62, 65, and 78 of the Arkansas Constitution.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 8. [Interest Rate Limits]

Nothing in this amendment shall limit the power of the General Assembly to fix, from time to time, one or more interest rate limits on various types of bonds issued by and loans made by or to governmental units.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 9. [Application of Amendment]

If this amendment or the application thereof to any person or circumstances is held invalid, the remainder of the amendment and its application to persons or circumstances other than those to which it is held invalid shall not be affected.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 10. [Amendment Provisions]

The provisions of this amendment, other than the provisions of Section 4 of this amendment, shall be self-executing.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 11. [Three-fourths vote]

The General Assembly may by a three-fourths vote of each house of the General Assembly amend the provisions of this amendment so long as the amendments are germane to this amendment and consistent with its policy and purposes.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 12. [Applicability]

The provisions of this amendment shall apply to all bonds issued and loans made after the effective date of this amendment.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 13. [Effective Date]

The effective date of this amendment is January 1, 2011.

Publisher's Notes. The bracketed heading was added by the Publisher.

§ 14. [Repealer]

This amendment shall repeal Article 19, § 13, and the interest rate provisions of Amendment Nos. 30, 38, 62, 65, and 78 of the Arkansas Constitution.

Publisher's Notes. The bracketed heading was added by the Publisher.

AMEND. 90. [BONDS FOR ECONOMIC DEVELOPMENT (CONST. AMEND. 82 AMENDED)].

Publisher's Notes. The bracketed heading was added by the Publisher.

This amendment amended Ark. Const., Amend. 82. The amendment to that section, effective January 1, 2011, is incorporated within that section. The amendment was proposed by H.J.R. 1007 and was adopted at the 2010 general election by a vote of 431,724 for and 260,735 against.

PROPOSED AMENDMENTS

Publisher's Notes. The following constitutional amendments were proposed during the 2011 Regular Session, to be voted on at the next general election.

Legislative Constitutional Amendment
Proposal by S.J.R. 5

BE IT RESOLVED BY THE SENATE OF THE EIGHTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS AND BY THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

That the following is proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Representatives and Senators, if a majority of the electors voting thereon at the election adopt the amendment, the amendment shall become a part of the Constitution of the State of Arkansas, to wit:

"SECTION 1. The Arkansas Constitution is amended to read as follows:

"Sales Tax Anticipated Revenue Bonds.

"(a) A city or county may form one (1) or more districts for the purpose of financing sales tax anticipated revenue bond projects within the district as provided by this section.

"(b) (1) A city or county which has formed a district under this section may issue bonds for the purpose of financing certain costs related to a sales tax anticipated revenue bond project within the district, as determined by the General Assembly.

"(2) The bonds may be secured by and be payable from all or a portion of the division of city and county sales and use taxes collected within the district under subsection (e) of this section.

"(3) The bonds shall not be:

"(A) Considered in calculating debt limits for bonds issued pursuant to Article XII, § 4, of the Arkansas Constitution; or

"(B) Subject to the provisions of Article XVI, § 1, of the Arkansas Constitution or Amendments 62 or 65 to the Arkansas Constitution.

"(c) For purposes of this section, the term 'sales tax anticipated revenue bond project' means an undertaking, including without limitation the acquisition, development, redevelopment, and revitalization of land within the district, for eliminating or preventing the development or spread of slums or blighted, deteriorated, or deteriorating areas, for discouraging the loss of commerce, industry, or employment, for increasing employment, or any combination thereof, as may be defined by the General Assembly.

"(d) Prior to a city or county's issuance of bonds for a sales tax anticipated revenue bond project under subsection (b) of this section, the sales tax anticipated revenue bond project shall be approved by an appropriate state agency as may be determined by the General Assembly.

"(e) The General Assembly may provide that all or a portion of the city and county sales and use tax collected within a district may be divided so that all or part of the increase in city and county sales and use tax collected by taxpayers within the district after the date on which the project plan has been approved by an appropriate state agency shall be used to pay any indebtedness incurred for the sales tax anticipated revenue bond project.

"(f) Any provision of the Constitution of the State of Arkansas in conflict with this section is repealed insofar as it is in conflict with this section.

"(g) The General Assembly shall provide for the implementation of this section by law.

"SECTION 2. (a) As used in Section 2 of this amendment:

"(1) 'Bonds' means all bonds, notes, certificates, or other interest-bearing instruments or evidences of indebtedness;

"(2) 'Closed local police and fire pension plan' means a police officer's pension and relief fund or a firefighter's pension and relief fund that:

"(A) Was created by a municipality or county of the state;

"(B) Does not cover police officers or firefighters first hired by the employer on or after January 1, 1983; and

"(C) Was consolidated with the Arkansas Local Police and Fire Retirement System or its successor; and

"(3) 'Unfunded liability' means the amount by which the actuarial accrued liability exceeds the actuarial value of assets.

"(b) (1) (A) With the consent of a majority of the qualified electors voting on the question at a special election called for that purpose or at a general election, the legislative body of a municipality or county may authorize the issuance of bonds for retiring the municipality's or county's unfunded liabilities for a closed local police and fire pension plan in an amount approved by a majority of those voting on the question either at a special election called for that purpose or at a general election.

"(B) The General Assembly shall prescribe a uniform method of calling and holding the election and the terms upon which the bonds may be issued.

"(C) The election shall be held no earlier than thirty (30) days after it is called by the legislative body.

"(2) (A) With the consent of a majority of the qualified electors voting on the question at an election called for that purpose, the legislative body of a municipality or county may authorize the levy of a local sales and use tax to pay the bonded indebtedness authorized in this section.

"(B) The maximum rate of any tax to pay bonded indebtedness as authorized in this section shall be stated on the ballot.

"(C) The General Assembly or the legislative body may authorize other taxes to retire the bonds.

"(3) (A) The limit of the principal amount of bonded indebtedness of the municipality or county is the total amount of unfunded liability of the municipality or county for a closed local police and fire pension plan.

"(B) An election shall not be called to authorize the issuance of bonds that would exceed the total amount of the unfunded liability of the municipality or county for the closed local police and fire pension plan either separately or combined with other bonds issued for the purpose of retiring the municipality's or county's unfunded liabilities for a closed local police and fire pension plan.

"(c) The results of an election called under this section shall be published in a newspaper of general circulation in the county or municipality, and any contest of the election or the tabulation of the votes in the election shall be brought within thirty (30) days after the publication.

"(d) (1) Bonds issued under this section shall be issued only for the repayment of unfunded liability of a closed local police and fire pension plan.

"(2) The bonds issued under this section and the tax authorized by this section shall not be used for any other purpose.

"(e) The bonds described in subsection (b) of this section may be sold:

"(1) At a public or private sale;

"(2) Upon the terms that the municipality or county determines are reasonable and expedient for effectuating the purpose of retiring the unfunded liability of a closed local police and fire pension plan of the municipality or county; and

"(3) At a price the municipality or county determines to be acceptable, including without limitation sale at a discount.

"(f) (1) (A) The municipality or county may invest or reinvest the proceeds from the sale of the bonds.

"(B) The General Assembly shall prescribe the terms upon which a municipality or county may invest or reinvest bonds for the purpose of retiring the unfunded liability of a closed local police and fire pension plan of the municipality or county.

"(2) (A) After bonds have been issued under this section, a municipality or county may issue bonds for the purpose of refunding the principal of and interest on any outstanding bonds issued under this section.

"(B) (i) The refunding bonds may be sold or delivered in exchange for the bonds being refunded.

"(ii) If sold, the refunding bonds shall be issued, secured, and sold in accordance with this section.

"(iii) If delivered in exchange, the municipality or county may exchange the bonds only for bonds of like amount, rate, interest, and length of issue.

"(C) The proceeds derived from the sale of any refunding bonds shall be used only for the purposes stated in this section.

"(g) After the electorate has approved the bond issue and before the issuance of the bonds, the municipality or county may borrow funds on an interim basis, not to exceed three (3) years, and pledge to the payment of the bonds the tax approved by the voters.

"(h) (1) The revenues from the tax levied for payment of bonded indebtedness authorized in this section constitute a special fund pledged exclusively as security for the payment of the bonded indebtedness.

"(2) The tax shall not be extended for any other purpose, and it shall not be collected for a greater length of time than necessary to retire the bonded indebtedness.

"(3) Upon retirement of the bonded indebtedness, any surplus tax collections that may have accumulated shall be transferred to the general funds of the municipality or county.

"(i) The General Assembly shall implement this section by appropriate legislation at the next regular session or fiscal session following the adoption of this amendment.

"(j) (1) This section does not affect the taxes and bonds authorized for other purposes before the adoption of this amendment.

"(2) Taxes levied before the effective date of this amendment continue in force until abolished, reduced, or increased as provided by law for those taxes.

"(3) All bonds and other evidences of indebtedness authorized before the effective date of this amendment are governed by the constitutional provisions and laws in effect at the time of the authorization of those bonds.

"SECTION 3. Section 2 of Amendment 78 to the Arkansas Constitution is amended to read as follows:

"§ 2. [Short-term financing obligations].

"(a) (1) For the purpose of acquiring, constructing, installing or renting real property or tangible personal property having an expected useful life of more than one (1) year, municipalities and counties may incur short-term financing obligations maturing over a period of, or having a term, not to exceed five (5) years.

"(2) The aggregate principal amount of short-term financing obligations incurred by a municipality or a county pursuant to this section shall not exceed five percent (5%) of the assessed value of taxable property located within the municipality or two and one half percent (2.5%) of the assessed value of taxable property located within the county, as determined by the last tax assessment completed before the last obligation was incurred by the city or county. The annual principal and interest payments in each fiscal year on outstanding obligations of a municipality or a county pursuant to this section shall be charged against and paid from general revenues for such fiscal year, and special revenues authorized to be used to acquire, construct, install, or rent the property financed by such obligations.

"(b) As used here, 'short-term financing obligation' means a debt, a note, an installment purchase agreement, a lease, a lease-purchase contract, or any other similar agreement, whether secured or unsecured; provided, that the obligation shall mature over a period of, or have a term, not to exceed five (5) years.

"(c) The provisions of this section shall be self-executing."

Legislative Constitutional Amendment
Proposal by H.J.R. 1001

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE

EIGHTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS AND BY THE SENATE, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

That the following is proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Representatives and Senators, if a majority of the electors voting thereon at the election adopt the amendment, the amendment shall become a part of the Constitution of the State of Arkansas, to wit:

"SECTION 1. Intent.

"The people of the State of Arkansas find that:

"(a) The state has an outdated and inadequate system of highway funding that is unable to meet the severe and pressing needs to maintain and improve the state's system of state highways, county roads, and city streets;

"(b) Increasing investment in the state highway system, county roads, and city streets will create jobs, aid in economic development, improve quality of life, and provide additional transportation infrastructure, including specifically, a four-lane highway construction plan designed to connect all regions of the state; and

"(c) To provide additional funding for the state's four-lane highway system, county roads, and city streets, this amendment levies a temporary sales and use tax and authorizes general obligation highway construction and improvement bonds for the state's four-lane highway system.

"SECTION 2. Definitions.

"As used in this amendment:

"(a) 'Bonds' means the State of Arkansas General Obligation Four-Lane Highway Construction and Improvement Bonds as authorized in this amendment;

"(b) 'Chairman' means the chair of the Arkansas Highway Commission;

"(c) 'Chief fiscal officer' means the Director of the Department of Finance and Administration;

"(d) 'Commission' means the State Highway Commission;

"(e) 'Debt service' means all amounts required for the payment of principal of, interest on, and premium, if any, due with respect to the bonds in any fiscal year, along with all associated costs, including without limitation the fees and costs of paying agents and trustees, and remarketing agent fees;

"(f) 'Designated tax revenues' means:

"(1) Taxes collected under this amendment and apportioned to the Arkansas State Highway and Transportation Department Fund under § 27-70-206 collected over an approximate ten-year period; and

"(2) Other fees or taxes that are dedicated to the repayment of the bonds; and

"(g) (1) 'Four-lane highway improvements' means construction of and improvements to:

"(A) Four-lane roadways;

"(B) Bridges;

"(C) Tunnels;

"(D) Engineering;

"(E) Rights-of-way; and

"(F) Other related capital improvements and facilities appurtenant or pertaining thereto, including costs of rights-of-way acquisition and utility adjustments.

"(2) 'Four-lane highway improvements' also means the maintenance of four-lane highway improvements constructed with proceeds of the bonds.

"SECTION 3. Levy of Temporary Tax.

"(a) (1) Except for food and food ingredients, a temporary additional excise tax of one-half percent (0.5%) is levied on all taxable sales of property and services subject to the tax levied by the Arkansas Gross Receipts Act of 1941.

"(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting and payment of all other Arkansas gross receipts taxes.

"(b) (1) Except for food and food ingredients, a temporary additional excise tax of one-half percent (0.5%) is levied on all tangible personal property and services subject to the tax levied by the Arkansas Compensating Tax Act of 1949.

"(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting and payment of Arkansas compensating taxes.

"SECTION 4. Authorization and purpose.

"(a) The State Highway Commission may issue State of Arkansas Four-Lane Highway Construction and Improvement General Obligation Bonds ('bonds') in a

total principal amount not to exceed one billion, three hundred million dollars ($1,300,000,000) for the purpose of:

"(1) Accelerating four-lane highway improvements in progress or scheduled as of January 1, 2011;

"(2) Funding new four-lane highway improvements not in progress or scheduled as of January 1, 2011;

"(3) Providing matching funds in connection with federal highway programs for four-lane highway improvements; and

"(4) Paying the costs of issuance of the bonds.

"(b) The bonds may be issued in one (1) or more series at times, in amounts, and bearing the designations as the commission in consultation with the chief fiscal officer determines.

"(c) (1) The bonds shall be general obligations of the State of Arkansas, secured by and payable from the general revenues of the state as set forth in Section 15 of this amendment.

"(2) The bonds shall be payable first from the following designated revenues:

"(A) Portion of the proceeds of the additional one-half of percent (0.5%) excise tax on gross proceeds or gross receipts; and

"(B) Portion of the proceeds of the additional one-half percent (0.5%) compensating excise tax; and

"(C) Other revenues designated by the General Assembly for this purpose.

"(d) (1) If the amendment is approved, the sales tax and the use tax will be collected over an approximate ten-year period, and so long as the bonds are outstanding.

"(2) The sales and use tax shall terminate upon payment in full of the bonds.

"(3) If the amendment is not approved, the sales and use taxes shall not be levied and collected.

"SECTION 5. Use of proceeds.

"(a) There is established on the books of the Treasurer of State, Auditor of State, and the chief fiscal officer of the State a special account within the State Highway and Transportation Department Fund to be designated as the Arkansas Four-Lane Highway Construction and Improvement Bond Account.

"(b) (1) On the last day of each month, the Treasurer of State, after making the deductions required from the net special revenues as set out in § 19-5-203(b)(1), shall transfer the revenues derived by the one-half cent (0.5¢) taxes levied under this amendment to the State Highway and Transportation Department Fund, the County Aid Fund and the Municipal Aid Fund in the percentages provided in the Arkansas Highway Revenue Distribution Law, § 27-70-201 and § 27-70-206.

"(2) The proceeds of the excise taxes transferred to the State Highway and Transportation Department Fund shall be set aside and transferred to the Arkansas Four-Lane Highway Construction and Improvement Bond Account and used for the purposes provided for in this amendment.

"(3) The tax revenues accruing from this amendment shall not be designated as special revenues for deposit to the Arkansas Department of Aeronautics Fund under § 27-115-110.

"SECTION 6. The Arkansas Highway Revenue Distribution Law, which defines highway revenues, shall include taxes levied and collected by this amendment.

"SECTION 7. Effective Date.

"(a) The taxes levied by this amendment shall not become effective until after a majority of the qualified electors of the state voting on the question approve the issuance of Four-Lane Highway Construction and Improvement General Obligation Bonds to be repaid in part by the taxes levied by this amendment and deposited to the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund.

"(b) If the tax levies and the issuance of the bonds are approved, the effective date of the temporary taxes levied by this amendment shall be July 1, 2013.

"SECTION 8. Termination of tax.

"(a) If bonds are issued under this amendment, the temporary taxes levied under this amendment shall be abolished when there are no bonds outstanding to which tax collections are pledged as provided in this amendment.

"(b) (1) To provide for the accomplishment of the administrative duties of the chief fiscal officer and to protect the owners of the bonds, the tax hall be abolished on the first day of the calendar month after the expiration of thirty (30) days from the date a written statement identifying the tax and the bonds is signed by the chairman and by the trustee for the bondholders, if a trustee is serving in this

capacity, and is filed with the chief fiscal officer.

"(2) The written statement shall certify that:

"(A) The trustee has or will have sufficient funds set aside to pay the principal of and interest on the bonds when due at maturity or at redemption prior to maturity, and the chairman certifies that the tax is not pledged to any other highway bonds; or

"(B) There are no longer any bonds outstanding payable from tax collections.

"(c) The Department of Finance and Administration shall continue to collect taxes levied under this section during the time the tax levies were in force but unpaid and remit the tax collections under the Arkansas Highway Revenue Distribution Law.

"SECTION 9. (a) The General Assembly shall provide for the proper administration and enforcement of this amendment by law.

"(b) Unless the General Assembly provides another procedure by law, the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., shall apply to the taxes levied under this amendment and to the reporting, remitting, and enforcement of the tax.

"SECTION 10. Procedure for issuing bonds

"Before any series of bonds may be issued:

"(1) (A) The commission shall, in consultation with the chief fiscal officer, determine the estimated amount of designated tax revenues to be collected by the state in the remainder of the then current fiscal biennium.

"(B) The estimated amount of designated tax revenues shall be reported to the commission and Governor;

"(2) The commission shall present a report to the Governor that includes the:

"(A) Highway construction and improvements to be financed with the proceeds of such series of bonds;

"(B) Estimated cost of the four-lane highway construction and improvements;

"(C) Amount of bonds necessary to finance such four-lane highway construction and improvements; and

"(D) Estimated amount of debt service required to pay the bonds;

"(3) Upon receipt of the report required under subdivision (2) of this section, the Governor shall, if he and the Commission determine that the estimated designated tax revenues and any other revenues appropriated by the General Assembly for repayment of bonds will be sufficient to pay the debt service on the series of bonds, by proclamation authorize the commission to proceed with the issuance of such series of bonds.

"(4) (A) After the Governor has issued his or her proclamation with respect to one (1) or more series of bonds, the commission shall adopt a resolution authorizing the issuance of the bonds.

"(B) Each such resolution shall contain the terms, covenants, and conditions as are desirable and consistent with this amendment, including without limitation the:

"(i) Establishment and maintenance of funds and accounts;

"(ii) Deposit and investment of tax collections and of bond proceeds; and

"(iii) Rights and obligations of the state, its officers and officials, the commission, and the registered owners of the bonds.

"(C) (i) Each such resolution of the commission may provide for the execution and delivery by the commission of a trust indenture or trust indentures, with one (1) or more banks or trust companies located within or outside the state, containing any of the terms, covenants, and conditions provided for in this section and other terms and conditions deemed necessary by the commission.

"(ii) The trust indenture or trust indentures shall be binding upon the commission, the state, and their respective officers and officials.

"SECTION 11. Terms of bonds.

"(a) (1) The bonds shall be issued in series as provided for in this section in amounts sufficient to finance all or part of the costs of four-lane highway construction and improvements provided under Section 10 of this amendment.

"(2) Each series shall be designated by the year in which the series was issued, and if more than one (1) series is issued in a particular year then by alphabetical designation.

"(b) The bonds of each series shall have the date or dates the commission determines and shall mature, or be subject to mandatory sinking fund redemption, over a period ending not later than ten (10)

years after the date of implementation of the temporary sales and use tax.

"(c) (1) The bonds of each series shall bear interest at the rate or rates determined by the commission at the sale of the bonds.

"(2) (A) The bonds may bear interest at either a fixed or a variable rate.

"(B) The interest may be taxable or tax-exempt or may be convertible from one (1) interest rate mode to another.

"(C) The interest shall be payable at a time determined by the commission

"(d) The bonds:

"(1) Shall be issued in the form of bonds registered as to both principal and interest without coupons;

"(2) May be in such denominations;

"(3) May be made exchangeable for bonds of another form or denomination, bearing the same rate of interest;

"(4) May be made payable at places within or outside the state;

"(5) May be made subject to redemption prior to maturity in such manner and for such redemption prices; and

"(6) May contain other terms and conditions established by the commission.

"(e) (1) Each bond shall be executed with the facsimile signatures of the Governor, the chairman, and the Treasurer of the State, and shall have affixed or imprinted on the bond the seal of the State of Arkansas.

"(2) Delivery of the executed bonds shall be valid, notwithstanding any change in persons holding the offices occurring after the bonds have been executed.

"SECTION 12. Sale of bonds.

"(a) (1) The bonds may be sold at a private sale or public sale and at terms as the commission determines to be reasonable and expedient.

"(2) The bonds may be sold at a price acceptable to the commission, and the price may include a discount or a premium.

"(b) (1) If the bonds are sold at a public sale, the commission shall provide notice of the offering of the bonds in a manner reasonably designed to notify the public finance industry that the offering is being made.

"(2) The commission shall set the terms and conditions of bidding, including the basis on which the winning bid will be selected.

"(c) (1) The commission may structure the sale of bonds utilizing financing techniques that are recommended by its professional advisors to take advantage of market conditions and obtain the most favorable interest rates consistent with the purposes of this amendment.

"(2) The commission may enter into ancillary agreements in connection with the sale of the bonds as necessary and advisable, including without limitation bond purchase agreements, remarketing agreements, letter of credit and reimbursement agreements, and bond insurance agreements.

"SECTION 13. Employment of professionals.

"The commission may retain professionals it determines are necessary to issue and sell the bonds, including without limitation legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

"SECTION 14. investment of proceeds.

"Prior to expenditure of the proceeds from the issuance of the bonds, the proceeds from the issuance of the bonds shall be held, maintained, and invested by the trustee as provided in a resolution of the commission or as provided in a trust indenture securing the bonds.

SECTION 15. General obligation.

"(a) (1) The bonds issued under this amendment shall be direct general obligations of the State of Arkansas for the payment of the debt service on which the full faith and credit of the State of Arkansas is irrevocably pledged as long as the bonds are outstanding.

"(2) The bonds shall be payable from:

"(A) The Arkansas Four-Lane Highway Construction and Improvement Bond Account; and

"(B) General revenues of the state as that term is defined in the Revenue Stabilization Law, § 19-5-101 et seq.

"(3) As necessary, the amount of general revenues is pledged to the payment of debt service on the bonds and shall be and remain pledged for these purposes.

"(b) (1) This amendment shall constitute a contract between the State of Arkansas and the registered owners of all bonds issued under this amendment which shall never be impaired, and any violation of its terms, whether under purported legislative authority or otherwise, may be enjoined by the Circuit Court of

Pulaski County upon the complaint of a bond owner or a taxpayer.

"(2) The court shall, in any suit against the commission, the Treasurer of State, or other officer or official of the state prevent a diversion of any funds pledged under this amendment and shall compel the restoration of diverted funds, by injunction or mandamus.

"(3) Without limitation as to any other appropriate remedy at law or in equity, a bond owner may, by an appropriate action, including without limitation injunction or mandamus, compel the performance of all covenants and obligations of the state, its officers, and officials.

"(c) This amendment shall not create a right of any character with respect to the bonds, and a right of any character with respect to the bonds shall not arise under the amendment, unless the first series of bonds authorized by this amendment has been sold and delivered.

"SECTION 16. Souces of repayment.

"(a) Without in any way limiting the general obligation of the state to repay the bonds, the designated tax revenues are pledged to the payment of the debt service on the bonds.

"(b) (1) The Treasurer of State shall establish in the State Highway and Transportation Department a special account known as the Arkansas Four-Lane Highway Construction and Improvement Bond Account.

"(2) The Treasurer of State shall deposit in the Arkansas Four-Lane Highway Construction and Improvement Bond Account all designated tax revenues.

"(3) The commission may pledge to the repayment of the bonds the full faith and credit of the state and may grant a lien upon the funds on deposit in the Arkansas Four-Lane Highway Construction and Improvement Bond Account.

"(c) (1) On or before commencement of each fiscal year, the commission in consultation with the chief fiscal officer shall determine the estimated amount required for payment of debt service due on each series of bonds issued and outstanding under this amendment during the fiscal year and shall certify the estimated amount to the Treasurer of State.

"(2) The Treasurer of State shall then make transfers from the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund to the trustees of each series of bonds, in such amounts and at such times as shall be specified in the indentures, to:

"(A) Pay the maturing debt service on each series of bonds issued and outstanding under this amendment; and

"(B) Establish and maintain with the trustee for each series of bonds a reserve or reserves for payment of debt service on each series of bonds.

"(d) The obligation to make transfers from the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund for the payment of debt service on, and, if applicable, a reserve for, each series of bonds is a first charge against amounts on deposit.

"(e) Funds on deposit in the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund that are in excess of the obligations set forth in (d) above may be used to:

"(1) Redeem bonds prior to maturity in the manner and in accordance with the provisions pertaining to redemption prior to maturity as set forth in the trust indentures authorizing or securing each series of bonds; or

"(2) Fund additional four-lane highway construction and improvements in the manner and in accordance with the provisions set forth in the trust indentures authorizing or securing each series of bonds.

"(f) If there are insufficient amounts in the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund to pay the debt service on bonds issued and outstanding under this amendment or to fund any necessary reserves at the required level, the State Treasurer shall transfer additional amounts to the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund from the general revenues of the State.

"SECTION 17. Investment of revenues.

"(a) Moneys held in the Arkansas Four-Lane Highway Construction and Improvement Bond Account in the State Highway and Transportation Department Fund and any fund in the State Treasury created under this amendment shall be in-

vested by the State Board of Finance to the full extent practicable pending disbursement for the purposes intended.

"(b) Notwithstanding any other provision of law, the investments and disbursements shall be in accordance with the terms of the resolution or trust indenture authorizing or securing the series of bonds to which the fund appertains to the extent the terms of the resolution or trust indenture are applicable.

"SECTION 18. Refunding bonds.

"(a) The commission may issue bonds for the purpose of refunding bonds previously issued under this amendment if the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized by this amendment, and the final maturity of such refunding bonds shall not exceed ten (10) years from the date of implementation of the tax.

"(b) The refunding bonds shall be general obligations of the State of Arkansas and shall be secured and sold in accordance with the provisions of this amendment.

"SECTION 19. Tax Exemption.

"(a) (1) All bonds issued under this amendment and interest on the bonds shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes.

"(2) Profits from the sale of the bonds shall also be exempt from income taxes.

"(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

"SECTION 20. State Aid Street Fund.

"(a) Upon the adoption of this amendment, the Department of Finance and Administration shall:

"(1) Deposit a total of one cent (1¢) per gallon from revenues distributed under the Arkansas Highway Revenue Distribution Law from the proceeds derived from existing motor fuel taxes and distillate fuel taxes; and

"(2) Permanently dedicate the revenues to the State Aid Street Fund created under § 27-72-407.

"(b) The State Aid Street Funds shall aid city streets under the law.

"SECTION 21. Powers of the commission.

"(a) All powers granted to the commission under this amendment shall be in addition to the powers as already exist under Amendment 42 to the Arkansas Constitution and the laws of the State of Arkansas.

"(b) A member of the commission or other state official shall not be liable personally for any reason arising from the issuance of bonds under this amendment unless the person acts with corrupt intent.

"SECTION 22. Form of submission to the electors.

"The proposition set forth shall be submitted for approval or rejection by the electors in substantially the following form:

'A TEMPORARY ONE-HALF PERCENT (0.5%) SALES AND USE TAX FOR STATE HIGHWAYS AND BRIDGES, COUNTY ROADS, BRIDGES AND OTHER SURFACE TRANSPORTATION, AND CITY STREETS, BRIDGES AND OTHER SURFACE TRANSPORTATION, WITH THE STATE'S PORTION TO SECURE STATE OF ARKANSAS GENERAL OBLIGATION FOUR-LANE HIGHWAY CONSTRUCTION AND IMPROVEMENT BONDS AND PERMANENTLY DEDICATING ONE CENT (1¢) PER GALLON OF THE PROCEEDS DERIVED FROM THE EXISTING MOTOR FUEL AND DISTILLATE FUEL TAXES TO THE STATE AID STREET FUND'

"On each ballot there shall be printed the following:

'FOR a proposed constitutional amendment to levy a temporary sales and use tax of one-half percent (0.5%) for state highways and bridges, county roads, bridges and other surface transportation, and city streets, bridges and other surface transportation, with the state's portion to secure State of Arkansas General Obligation Four-Lane Highway Construction and Improvement Bonds in the total principal amount not to exceed $1,300,000,000 for the purpose of constructing and improving four-lane highways in the State of Arkansas, prescribing the terms and conditions for the issuance of such bonds which will mature and be paid in full in approximately ten (10) years, which payment in full shall terminate the temporary sales and use tax, describing the sources of repayment of the bonds and permanently dedicating one cent (1¢) per gallon of the proceeds derived from the

existing motor fuel and distillate fuel taxes to the State Aid Street Fund.'

'AGAINST a proposed constitutional amendment to levy a temporary sales and use tax of one-half percent (0.5%) for state highways and bridges, county roads, bridges and other surface transportation, and city streets, bridges and other surface transportation, with the state's portion to secure State of Arkansas General Obligation Four-Lane Highway Construction and Improvement Bonds in the total principal amount not to exceed $1,300,000,000 for the purpose of constructing and improving four-lane highways in the State of Arkansas, prescribing the terms and conditions for the issuance of such bonds which will mature and be paid in full in approximately ten (10) years, which payment in full shall terminate the temporary sales and use tax, describing the sources of repayment of the bonds and permanently dedicating one cent (1¢) per gallon of the proceeds derived from the existing motor fuel and distillate fuel taxes to the State Aid Street Fund.'"